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**International and National Legal Frameworks
on Gender Equality in the Workplace**
Progress, Gaps, and Social Implications in Japan

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Riassunto

Dalla fine della Seconda Guerra Mondiale, il governo giapponese ha ratificato vari trattati internazionali e ha adottato numerose leggi nazionali relative alla parità di genere sul posto di lavoro. Ciò nonostante, nel paese persistono importanti disparità tra uomini e donne in termini di opportunità di lavoro, progressione di carriera, retribuzione e conciliazione tra lavoro e responsabilità familiari. Questa tesi si pone quindi l'obiettivo di esaminare il persistente divario tra obblighi formali del Giappone in materia di parità di genere nel mondo del lavoro e la realtà effettivamente vissuta dalle donne. In particolare, l'elaborato sostiene che tali disuguaglianze di genere non dipendano solamente da norme culturali legate ai tradizionali ruoli di genere, bensì che siano anche conseguenza di una legislazione nazionale debole e di strutture istituzionali che continuano a rafforzare le aspettative tradizionali sul ruolo della donna nella società tramite un basso rispetto degli obblighi internazionali.

La tesi si struttura quindi su quattro capitoli. Il primo, individua gli standard giuridici internazionali che regolano la parità di genere sul posto di lavoro. Il secondo, analizza l'evoluzione della legislatura nazionale giapponese in questo stesso ambito. A seguire, il terzo capitolo si pone di valutare le ragioni per le quali questi obblighi formali non si sono tradotti in una sostanziale parità di genere nella pratica ed infine il quarto esplora le conseguenze sociali, demografiche ed economiche di questo divario tra formalità e pratica.

Il primo capitolo si concentra quindi sul quadro giuridico internazionale che regola la parità di genere nel mondo del lavoro. Inizia ripercorrendo lo sviluppo storico dei diritti socio-economici e la successiva e graduale affermazione della parità di genere come diritto umano all'interno della legislatura internazionale. In particolare, il capitolo spiega come la lotta femminista per i diritti socio-economici delle donne abbia contribuito allo sviluppo di norme internazionali sul lavoro e alla creazione di strumenti giuridici dedicati all'uguaglianza di genere. Il capitolo si concentra poi sulla concettualizzazione della discriminazione di genere in quest'ambito, definendone il significato su basi giuridiche e spiegando come questa possa manifestarsi a livello pratico. Focus del capitolo rimane però l'analisi di specifici articoli tratti dai principali trattati internazionali che regolano la parità di genere nel mondo lavorativo. Particolare attenzione viene quindi data alle Convenzioni dell'Organizzazione Internazionale del Lavoro (OIL), al Patto Internazionale sui Diritti Economici, Sociali e Culturali (ICESCR) e alla Convenzione per l'Eliminazione di Tutte le Forme di Discriminazione Contro le Donne (CEDAW).

Per quanto riguarda le Convenzioni dell'Organizzazione Internazionale del Lavoro, vengono analizzate in particolare la No. 100, sulla Parità di Retribuzione, la quale risponde al tema della sottovalutazione retributiva delle professioni tradizionalmente femminili con il principio della "parità di retribuzione per lavoro di pari valore." Si passa poi alla Convenzione No. 111 sulla Discriminazione in Materia di Impegno e nelle Professioni, nota per concentrarsi sugli *effetti* di pratiche discriminatorie e non solo sull'intento dietro a queste, obbligando così gli Stati ratificanti a promuovere la parità di genere con politiche nazionali mirate. A seguire, viene esaminata la Convenzione No. 156 sulla protezione dei Lavoratori con Responsabilità Familiari. Questa si pone di sfidare gli stereotipi tradizionali di genere secondo i quali la cura dei figli è una responsabilità esclusivamente femminile. Infine, la Convenzione No. 183 sulla Tutela della Maternità ha lo scopo di rafforzare i diritti delle donne lavoratrici in maternità. A seguire, diventano fulcro di analisi gli Articoli 2, 3, 6, 7 e 10 del Patto Internazionale sui Diritti Economici, Sociali e Culturali. In particolare, dopo lo studio dei primi quattro, l'elaborato si sofferma ad esaminare l'Articolo 10 sulla protezione dei diritti socio-economici della famiglia, delle madri lavoratrici e dei bambini. Focus di questa sezione, dopo un'analisi dei contenuti dell'articolo, è quindi l'interpretazione di quest'ultimo che, nonostante non abbia ancora ricevuto una propria analisi da parte del Comitato sui Diritti Economici, Sociali e Culturali (CESCR), può essere comunque interpretato attraverso altre disposizioni dell'ICESCR e altri strumenti del diritto internazionale.

Penultimo elemento di analisi per questo capitolo è la CEDAW, considerata la convenzione internazionale più completa nella difesa dei diritti delle donne. Questa convenzione infatti vieta ogni forma di discriminazione di genere imponendo agli Stati di adottare misure favorevoli al raggiungimento di una effettiva parità di genere. Visto lo scopo di questa tesi, particolare attenzione viene data all'Articolo 11 della CEDAW il quale si occupa di diritto al lavoro per le donne. L'articolo garantisce infatti pari opportunità di impiego, parità di retribuzione e protezione da ogni forma di discriminazione legata al matrimonio e alla maternità imponendo in questo modo agli Stati ratificanti l'obbligo di mettere in atto, a livello nazionale, iniziative concrete per la protezione di questi diritti. Vengono infine analizzati i meccanismi di monitoraggio legati a questi strumenti giuridici. Gli organi dei trattati, come il Comitato sui Diritti Economici, Sociali e Culturali e il Comitato per l'Eliminazione di Tutte le Forme di Discriminazione Contro le Donne (Comitato CEDAW), hanno infatti il compito di monitorare che le norme sancite in questi ultimi vengano rispettate a livello nazionale. Nonostante ciò, l'analisi si sofferma sul fatto che la loro natura non legalmente vincolante ne limita la capacità di imporre agli Stati ratificanti il completo rispetto delle norme osservate negli specifici trattati.

Il secondo capitolo si concentra sul quadro giuridico giapponese in materia di diritti sulla parità di genere nel posto di lavoro. A questo proposito, il capitolo esamina in primo luogo lo sviluppo storico del diritto al lavoro in Giappone a partire dal secondo dopoguerra. Vengono quindi analizzati la Costituzione Giapponese del 1946, la Legge sugli Standard Lavorativi e la Legge sul Benessere delle Donne Lavoratrici, che insieme costituiscono i tre strumenti giuridici fondamentali sui quali si basa la seguente legislazione in merito al raggiungimento della parità di genere sul posto di lavoro. Punto chiave di questo capitolo è l'analisi della Legge sulle Pari Opportunità di Impiego (EEOL), diventata poi il pilastro della legislazione giapponese in merito alla parità di genere in contesto lavorativo. Ne vengono quindi esaminate le origini, le varie modifiche, il contenuto e le misure volte a garantirne il rispetto. Il capitolo si concentra poi sull'analisi di leggi e politiche mirate ad aiutare i lavoratori a conciliare lavoro e responsabilità familiari. A questo scopo vengono prese in esame la *Child Care and Family Care Leave Law*, sul congedo parentale e familiare, l'*Angel Plan* e il *Gold Plan*. Le ultime due misure nello specifico, nonostante non abbiano avuto particolare successo, miravano a supportare i genitori lavoratori in entrambi questi ruoli e ad incoraggiare la continua partecipazione delle donne nel mercato del lavoro. Vengono infine prese in considerazione iniziative politiche più recenti, come il *Women's Advancement Promotion Act* e la Legge sulla Riforma dello Stile di Lavoro, le quali dimostrano l'impegno del governo giapponese nell'aumentare la partecipazione professionale delle donne nel mondo del lavoro e affrontare la crisi demografica che il paese sta tuttora attraversando.

Se i primi due capitoli hanno lo scopo di presentare lo stato attuale della legislazione internazionale e nazionale giapponese in merito alla promozione della parità di genere sul posto di lavoro, il terzo capitolo costituisce il nodo centrale di analisi di questa tesi. Il capitolo esamina infatti le ragioni per cui continuano ad esistere discrepanze tra gli obblighi giuridici formali del Giappone e i risultati pratici che questi hanno portato nella società. Ne risulta quindi che il problema non risiede nell'assenza di norme giuridiche, bensì nel limitato rispetto che il Giappone ha verso queste ultime. A livello internazionale infatti, l'applicazione da parte del Giappone degli obblighi previsti dal Patto Internazionale sui Diritti Economici, Sociali e Culturali e dalla Convenzione per l'Eliminazione di Tutte le Forme di Discriminazione Contro le Donne è stata in più occasioni definita come "incompleta" sia dal CESCER che dal Comitato CEDAW. Anche la mancata ratifica da parte del Giappone di due importanti Convenzioni dell'OIL, quali la Convenzione No. 111 e la Convenzione No. 183, viene messa in evidenza. In particolare, questa viene interpretata come manifestazione della riluttanza del governo giapponese a vedersi imporre ulteriori obblighi da parte delle istituzioni internazionali.

Similmente, a livello nazionale, la Legge sulle Pari Opportunità di Impiego e il *Women's Advancement Promotion Act* vengono spesso criticate per il fatto che funzionano completamente su base volontaria. Nessuna delle due infatti presenta obblighi vincolanti né sanzioni in caso di violazioni da parte dei datori di lavoro nei confronti dei propri dipendenti. Poiché inoltre i rimedi a disposizione delle vittime sono estremamente limitati, pratiche discriminatorie come il *Dual-Track Career System*, continuano ad esistere con un rischio di ripercussioni relativamente basso per i datori di lavoro che ne fanno uso. Questo sistema, che spesso indirizza le donne verso percorsi professionali con minori opportunità di fare carriera e stipendi più bassi, è ulteriore fonte di analisi all'interno dell'elaborato. Per quanto apparentemente neutrale infatti, questo sistema è sintomo e conseguenza di un sistema legislativo debole ed incapace di prevenire pratiche discriminatorie che svantaggiano la crescita professionale femminile. Infine, il capitolo esamina anche il ruolo di una specifica politica fiscale, nota come Legge di Detrazione Coniugale. Questa politica infatti, che permette ad un uomo di pagare meno tasse in caso abbia un coniuge economicamente dipendente da lui, crea incentivi finanziari che portano le donne a limitare la quantità di ore che dedicano al loro lavoro o a mollarlo completamente. Di conseguenza, questa politica finanziaria rafforza e conferma i tradizionali ruoli di genere scoraggiando la piena partecipazione femminile al mercato del lavoro.

Il quarto capitolo esplora infine le conseguenze a livello sociale che queste carenze legislative hanno causato. Questa sezione ha infatti lo scopo di dimostrare come la presenza di leggi deboli causa la persistenza di pratiche discriminatorie all'interno del contesto lavorativo, che a loro volta rafforzano il modello tradizionale di "uomo che mantiene la famiglia" limitando al contempo le opportunità per le donne di raggiungere l'indipendenza economica e l'avanzamento professionale. Partendo quindi da un'analisi più ampia di quelli che sono i pilastri della cultura lavorativa giapponese, come ad esempio un orario di lavoro estenuante e la completa lealtà verso l'azienda, si passa alle molestie vissute dalle donne lavoratrici, soprattutto in contesti legati alla maternità.

La tesi indaga quindi su come tali caratteristiche contribuiscano a mantenere la disparità di genere sul posto di lavoro tramite pratiche quali la segregazione occupazionale e la concentrazione di donne in ruoli part-time. I due fattori favoriscono anche l'aumento del divario salariale. La tesi prende quindi in esame le implicazioni demografiche ed economiche di questo sistema. La poca protezione offerta alle madri lavoratrici contro atti discriminatori, porta infatti molte di loro a posticipare il diventare madri contribuendo in questo modo ad un calo dei tassi della natalità. Allo stesso tempo, il fatto che molte donne, una volta diventate madri, vengano spinte a lasciare il loro lavoro o subiscano come minimo una drastica riduzione delle proprie opportunità di carriera, frena la crescita economica giapponese. La tesi sostiene quindi che questo divario tra promesse legali formali

di protezione dalla discriminazione di genere e la realtà vissuta dalle donne giapponesi, rischi di compromettere la credibilità delle norme stesse agli occhi della popolazione. A sua volta, questa percezione può inoltre indebolire la legittimità della legislazione sia internazionale che nazionale in materia di uguaglianza di genere e ridurne quindi la capacità di portare ad un cambiamento sociale all'interno del paese.

Questo elaborato conclude pertanto che le persistenti disuguaglianze di genere nel mercato del lavoro giapponese derivino da una combinazione di carenze nel quadro legislativo nazionale e un'insufficiente applicazione delle leggi internazionali. Questi non sono infatti riusciti a contrastare efficacemente le norme culturali che continuano a favorire i ruoli di genere tradizionali all'interno del contesto lavorativo. Nonostante i progressi compiuti quindi, la parità di genere formale non si è ancora tradotta in effettiva uguaglianza nella pratica. Al contrario, il raggiungimento di quest'ultima richiederà importanti riforme del diritto nazionale per rendere le leggi esistenti più rigorose negli obblighi imposti e una più ferrea applicazione del diritto internazionale. Questo sarà infatti necessario per riuscire a contrastare efficacemente norme sociali basate sugli stereotipi di genere che continuano ad influenzare il mercato del lavoro giapponese.

Introduction

Since the post-World War II era, and particularly following its ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Japanese government has sought to promote women's economic participation in the labour market and strengthen its legislation in regards to gender equality in the workplace. These efforts have included both the ratification of various international instruments as well as the adoption of gender equality laws at national level. Yet, despite these measures, Japan continues to face pronounced gender inequalities. Indeed, according to the 2025 Global Gender Gap Report released by the World Economic Forum, Japan ranks 118th out of 148 countries for gender equality,¹ thus remaining in the lowest ranked position among the rest of the G7 group² and third to last among all other Eastern Asian and Pacific countries.³

In this context, questions naturally arise on why gender inequality in employment persists regardless of how much women's economic participation has been promoted in Japan. As such, the aim of this thesis is to answer this question by analysing the gap between Japan's formal international and domestic commitments to gender equality in the workplace and their practical enforcement. More specifically, while it is understood that Japan's cultural beliefs about traditional gender roles are among the causes for gender discrimination in the workplace, the existence of domestic legislations too weak to challenge these traditional values as well as inconsistencies in the implementation and enforcements of international equality legislations, are understood as the reason behind the slow advancement of gender equality within the Japanese employment structure.

Consequently, with the objective of establishing a solid foundation for the following analysis, the first chapter examines what international law has to say in regard to gender equality in employment and therefore what are the international standards in this respect. Thus, this chapter begins by giving a brief overview of the historical development of socio-economic rights for women and the consequent emergence of gender equality as a fundamental principle of international human rights law. It then moves on to conceptualise what is intended, in practice, for gender discrimination within the workplace. Following, to analyse what are the obligations imposed on States to address gender discrimination in employment, particular attention is given to the main international instruments concerning this topic. As such, the International Covenant on Economic, Social and

¹ World Economic Forum, *Global Gender Gap Report 2025*, 2025, p. 39.

² J. Speed, "Japan ranks 118th out of 148 countries in gender gap report," *The Japan Times*, 2025. Available at: <https://www.japantimes.co.jp/news/2025/06/12/japan/society/wef-gender-equality-report/>

³ World Economic Forum, *Global Gender Gap Report*, p. 33.

Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women, and the core International Labour Organization (ILO) Conventions concerning equal remuneration, non-discrimination in employment and occupation and protection of maternity and workers with family responsibilities will be the focus of this section. Lastly, the chapter examines the supervisory and enforcement mechanisms established under each of these international instruments, highlighting the role of treaty bodies and international monitoring in promoting compliance with international standards on gender equality labour rights.

Following, to better understand what legislations are in place at domestic level, Chapter 2 focuses on the historical evolution of Japanese domestic law concerning gender equality in the workplace. As such, the chapter begins by analysing the post-war foundations of Japanese labour law, including the Japanese Constitution of 1946, the Labour Standard Act and its amendments and the Working Women's Welfare Act. Together in fact, these constitute the first legal foundations for protection against gender discrimination in employment. Then, the chapter explores the development of the Equal Employment Opportunity Law (EEO), which represent the main pillar of Japanese legislation protecting gender equality in the workplace. As such, this section will trace the origins of this law, its major amendments, the substantive provisions and its enforcement mechanisms. Policies such as the Child Care and Family Care Leave Law (CCFCLL), the Angel Plan and the Gold Plan, aimed at helping workers, and particularly women, reconcile work and family responsibilities will also be discussed. Lastly, the chapter examines some of the most recent legal additions, such as the Women's Advancement Promotion Act (WAPA) and the Work Style Reform Laws, thus underlining Japan's ongoing effort to increase women's participation in the workforce.

Once having analysed what is the current state of the law at both international and domestic level in respect to the protections of gender equality rights in employment, Chapter 3 aims at explaining the reason behind the gap between these formal commitments and their weak practical implementation in Japan. As such, this chapter discusses the limited implementation, enforcement and juridical use of the International Covenant on Economic, Social and Cultural Rights and of the Convention on the Elimination of All Forms of Discrimination against Women, as well as the implications of Japan's continued non-ratification of the ILO Conventions No. 111 on Discrimination in Employment and Occupation and No. 183 on Maternity Protection. Then, it evaluates the shortcomings of two core domestic legislations designed to promote gender equality in employment, namely, the Equal Employment Opportunity Law and the Women's Advancement Promotion Act. As such, this section aims to highlight the structural issues of these two policies, such as their weak enforcement mechanisms, resulting in the persistence of discriminatory practices such as the dual-

track employment system, the absence of binding obligations, and the limited remedies they offer to victims. Lastly, this chapter explores how the Japanese tax system, through the Marital Deduction Law, feeds into these legal weaknesses, thus continuing to reinforce traditional gender roles and discouraging women's participation in the labour market. In doing so, this chapter seeks to explain why, despite the legislative and policy developments adopted by the Japanese government and described in the first two chapters, Japan continues to rank low in the Global Gender Gap Index and therefore why gender inequalities continue to persist in the Japanese workplace.

Lastly, the fourth chapter focuses on the consequences that these gaps between formal legal commitments to gender equality in employment and their practical enforcement have had on Japanese society. To do so, this chapter firstly analyses how traditional workplace structures and rooted gender norms, which these gender equality legislations seem unable to dismantle, continue to shape employment practices. In particular, it focuses on how these end up reinforcing the male breadwinner model while also limiting women's career opportunities. Then, it explores the practical manifestation of these practices through the persistence of occupational gender segregation and the unequal channelling of women in non-regular and low-paying roles, both of which also contribute to the persistence of a wide gender wage gap. In doing so, the chapter is able to highlight the limited practical benefits achieved through these legislations. The chapter then focuses on specific demographic and economic implication that this disconnection has had on society. For instance, how the limited protection of working mothers' socio-economic rights contributes to the declining fertility rates and how the underutilisation of the female labour force leads to a limited economic growth for the country. Lastly, the chapter focuses on how all these elements combined, risk to undermine the legitimacy of these gender equality norms, as the lack of tangible improvements in everyday life may lead individuals to perceive them as mostly symbolic rather than actually transformative.

1. International Legal Framework on Gender Equality in the Workplace

1.1 Introduction

Gender equality in the workplace has progressively evolved from a matter of social policy aimed at quelling worker's unrest⁴ into a core principle of international human rights and labour law.⁵ What was once primarily framed as a question of equal treatment between men and women, grounded on the principles of equality and non-discrimination that constitute the foundational pillars of the United Nations and its Charter⁶ and later of the Universal Declaration of Human Rights (UDHR),⁷ is now understood as a broader structural issue involving access to employment, remuneration, career progression and the reconciliation of work and family responsibilities. Yet, regardless of the recognition of this issue and the following formal legal advancements made in this field, the presence of gender discrimination in the workplace continues to persist. Contemporary interpretations of international law have therefore increasingly adopted a more substantive and outcome-oriented equality approach aimed at addressing structural patterns of inequality and discrimination.⁸

In this context therefore, the international legal framework plays a fundamental role in defining and shaping States' obligations. Through customary law,⁹ binding treaties¹⁰ and soft power,¹¹ international instruments are able to influence and establish at least minimum standards that, especially ratifying States, must respect and fulfil. Multilateral treaties and declarations are in fact able to "declare existing customs, crystallise emerging customs and generate new customs."¹² In practice, this means that these instruments can not only articulate provisions on the prohibition of discrimination, but also, specifically in the case of socio-economic rights, impose positive obligations on States to adopt measures aimed at achieving *de facto* equality.

⁴ International Labour Organisation, *Constitution of the International Labour Organisation*, International Labour Office, Geneva, 2021, (ILO Constitution).

⁵ "Gender equality," United Nations. Available at: <https://www.un.org/en/global-issues/gender-equality>

⁶ *Charter of the United Nations*, San Francisco, 1945, preamble, (UN Charter).

⁷ UN General Assembly, *Universal Declaration of Human Rights*, 217A(III), 1948, preamble, (UDHR).

⁸ T. Loenen, *The Conceptualization of Equality and Non-discrimination as Legal Standards: from Formal to More Substantive Equality*, Vol. 111, Brill, 2024, p.40.

⁹ M. D. Evans, *International Law*, Oxford University Press, 2018, p. 95.

¹⁰ *Ibid.*, p. 91.

¹¹ T. Loenen, *The Conceptualization of Equality*, p. 40.

¹² M. D. Evans, *International Law*, p. 91.

In the case of gender equality norms in employment, their development has been particularly influenced by the work of the International Labour Organisation and the United Nations. More specifically, the International Covenant on Economic, Social and Cultural Rights provides the legal basis for the principle of gender equality in the economic field. At the same time, the Convention on the Elimination of All Forms of Discrimination against Women constitutes the most comprehensive international human rights instrument addressing discrimination against women, including the field of employment.¹³ Lastly, complementing these frameworks, the International Labour Organisation has developed a series of Conventions specifically aimed at the prohibition of discrimination in the field of employment and occupation,¹⁴ equal remuneration,¹⁵ maternity protection,¹⁶ and the rights of workers with family responsibilities.¹⁷ As such, these instruments form a normative framework that seeks to influence and transform both law and practice.

This chapter will therefore examine this framework in four parts. Firstly, Section 1.2 will consider the normative foundations of gender equality in employment starting from a brief historical overview of the development of socio-economic rights in international law and the emergence of the principle of gender equality in employment. Then, it will focus on a more precise conceptualisation of what gender discrimination in employment is, how it manifests and what is the role of States in dealing with it. The Section 1.3 will then analyse the core international obligations prohibiting discrimination in the workplace. It will examine how discrimination in employment is defined and prohibited in international law through the breakdown of specific articles contained in the ILO Declarations No. 100 and 111, the ICESCR and the CEDAW. Following, Section 1.4 will focus on specific provisions targeting the protection of workers with family responsibilities and maternity, recognising that reproductive and caregiving roles have been central to pattern of workplace inequality. Particular attention will therefore be given to the ILO Declarations No.156 and No. 183, Article 10 of the ICESCR and Article 11 of the CEDAW. Lastly, Section 1.5 will give a brief overview on the supervisory and enforcement mechanisms embedded within international legal instruments. Beyond standard-setting in fact, the effectiveness of international provisions depends on monitoring

¹³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, Treaty Series, Vol. 1249, 1979, Art. 11, (CEDAW).

¹⁴ International Labour Organization (ILO), C111 - Discrimination (Employment and Occupation) Convention, 1958, (No. 111), (ILO C111).

¹⁵ International Labour Organization (ILO), C100 - Equal Remuneration Convention, 1951, (No. 100), (ILO C100).

¹⁶ International Labour Organization (ILO), C183 - Maternity Protection Convention, 2000, (No. 183), (ILO C183).

¹⁷ International Labour Organization (ILO), C156 - Workers with Family Responsibilities Convention, 1981, (No. 156), (ILO C156).

procedures and, where applicable, the reception of individual complaints. This section will therefore look at the structure of treaty bodies and the ILO supervisory system and how they assess complaints.

1.2 Normative Foundations of Gender Equality in Employment

The original notion of “human rights,” as argued in all the world’s major religion and moral philosophy, is rooted in the inherent nature of the human being itself.¹⁸ Accordingly, every individual, by virtue of belonging to the human family, possesses inalienable rights to equality of treatment, dignity, and freedom from discrimination.¹⁹ As such, these principles were enshrined as foundational pillars of freedom, justice and peace in the United Nations Charter and later reaffirmed in the Universal Declaration of Human Rights,²⁰ which proclaimed that “all human beings are born free and equal in dignity and rights.”²¹ Thus, through these international instruments, “equality in dignity” became the normative foundation of modern human rights law and ensured that equality acquired universal application.²²

Furthermore, throughout history, individuals have invoked these same inherent rights and principles to limit States’ powers and keep them accountable for their actions.²³ This struggle may be understood as human rights activism, or more broadly as the effort to narrow the gap between moral claims of human rights and their formal recognition in law, so that such rights are fully acknowledged and legally enforceable.²⁴ However, as will be examined in greater detail in the following subsection, States have seldom recognised human rights without some form of “rebellion against tyranny and oppression.”²⁵ It is for this reason that international legal discourse often refers to three generations of such rights, reflecting the historical evolution of rights claim and their gradual incorporation into international law. As such, while “first generation” rights, also referred to as civil and political rights, were firmly established into international law during the Cold War era, “second generation” rights, also known as economic and social rights, were understood to be subject to progressive implementation, as they imposed positive obligations on States to take active measures to ensure their realisation.²⁶

¹⁸ F. Viljoen, “International Human Rights Law: A Short History,” *Journal of Humanitarian Medicine*, Vol. 12, No. 1, 2021, p.4.

¹⁹ UN Charter, Preamble and UDHR, Preamble.

²⁰ M. D. Evans, *International Law*, p. 777.

²¹ UDHR, Art. 1.

²² “The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality,” *Equal Rights Trust*, 2007, p. 6.

²³ M. D. Evans, *International Law*, p. 781.

²⁴ F. Viljoen, “International Human Rights Law: A Short History,” p.4.

²⁵ UDHR, Preamble.

²⁶ M. D. Evans, *International Law*, p. 781 and F. Viljoen, “International Human Rights Law: A Short History,” pp. 4-5.

However, this meant that, while the principles of equality of treatment and non-discrimination protected as first generations rights, albeit with different degrees of success, had to be implemented by States in the civil and political sphere, the adoption of these same principles in the economic context progressed at a slower and less rigorous pace.²⁷ As a result, to this day and despite the significant advancements in both national and international laws, inequality, and particularly gender discrimination, in the workplace remain persistent social issues. Thus, although compared to just a few decades ago women are now able to access employment and potentially attain the same level of career success as men, as argued by Professor Kathryn Abrams “increased access alone does not create conditions in which equality is possible.”²⁸ In other words, formal equality of opportunity does not automatically generate substantive equality in outcomes. Therefore, workplace structures continue to reproduce entrenched disparities in employment conditions, career progression, and professional recognition.

1.2.1 A Short History of Socio-Economic Rights and Gender Equality in the Workplace

While the historical roots of social and economic rights, can arguably be traced as far back as the Code of Hammurabi and the Bible,²⁹ women’s struggles for equal socio-economic rights have a relatively shorter history. These are in fact more closely tied with the wave of globalisation and technological advances that characterised the 19th and 20th century. In the 19th century in fact, as serfdom practices started being dismantled in some countries, the development of the Industrial Revolution led to a dramatic expansion of factory labour. With little to no laws protecting their rights, and in a context of growing social inequalities, factory workers started fighting for the creation of trade unions and the prevention of workplace abuses. As such, the importance of socio-economic rights became much more prominent, as States started to realise the dangers of denying factory workers a decent living through the insurgence of riots and revolutions in the years prior to the First World War.³⁰

Within this broader context, industrialisation also created both new opportunities and challenges that shaped women’s fight for equality. The shift from small-scale production to industrial economies led both women from the middle class and the bourgeoisie to experience a more precarious economic

²⁷ F. Viljoen, “International Human Rights Law: A Short History,” pp. 4-5.

²⁸ K. Abrams, “Gender Discrimination and the Transformation of Workplace Norms,” *Vanderbilt Law Review*, Vol. 42, No. 4, 1989, p. 1184.

²⁹ T. Cushman, ed. *Handbook of Human Rights*, Routledge, London, 2012, p. 292.

³⁰ D. L. Shelton, “An Introduction to the History of International Human Rights Law,” *GW Law Faculty Publications & Other Works*, 2007, pp. 9-10.

condition. At the same time in fact, men from these same social classes gradually started postponing their marriages in fear of economic uncertainty. As such, many middle-class women, faced with declining economic security and delayed marriage prospects, begun entering the workforce and consequently started advocating for equal pay for equal work and demanded equal access to education in order to enter white-collar professions. Meanwhile, working class women experienced the harshest consequences of this industrialisation period. They were in fact often exploited as low-paid labour while also bearing the burden of family and childcare responsibilities. As such, their struggles were more closely aligned with the broader proletarian campaign, as they fought not only for gender equality but also against systemic economic exploitation.³¹

Following World War I, with the aim to “enforce peace based on the equality of rights”³² and as part of the Peace Treaty of Versailles, the international community united to create the International Association for the Protection of Labour and to introduce international legal standards for worker’s rights through the International Labour Office.³³ The ILO therefore had the role of protecting specific socio-economic rights of workers and obliging participating governments to respect their own citizens under the belief that “universal and lasting peace [could] be accomplished only if it is based on social justice.”³⁴ In the years after its establishment, nine Conventions and ten Recommendations were adopted by the International Labour Organisation addressing various key issues. Among these, particular attention should be given to Convention No. 003 of 1919 on maternity protection, which represented one of the earliest instances of recognition of normative substantive equality for women in the workforce. These standards of “equality of rights” also managed to be interlaced in the framework used to develop the Covenant of the League of Nations of 1920, in which all States Party vowed to “secure and maintain fair and humane conditions of labour for men, women and children.”³⁵ As such, these became the first steps for the recognition of women’s socio-economic rights and therefore of gender equality in the economic sphere.

In the period between the two global conflicts, women continued their fight to gain equal rights in the field of employment. By the early 20th century, women had learned and developed strategies on how to effectively organise and protest, securing positive results at national level including the right to vote in some countries. Thus, during the interwar period, they were able to shift this knowledge towards a more coordinated international action for the achievement of socio-economic

³¹ M. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press, 2008, pp. 160-162.

³² *Ibid.*, p. 178.

³³ F. Viljoen, “International Human Rights Law: A Short History,” p. 5.

³⁴ “History of the ILO,” International Labour Organisation. Available at: <https://www.ilo.org/about-ilo/history-ilo>

³⁵ League of Nations, *Covenant of the League of Nations*, 1919, Art. 23(a).

rights. As a result, women were able to create international communities which soon evolved in NGOs and international federation of trade unions. Although completely based on international cooperation, many of these international efforts took place at the regional meeting of the Pan America Union. Indeed, it was at one of these conferences in 1928, that a recommendation for states to adopt legislations on non-discrimination in employment was made, further pushing the idea that human rights concerns should also include economic, social, and cultural rights and that those should be based on equal standards.³⁶

These standards for equality in the economic field were further set in stone with the creation of the United Nations and its Charter in 1945. This system was built on a dual basis; on one hand the UN Charter, binding for all States Party, and on the other a network of treaties that would become mandatory only for ratifying states.³⁷ In this context, a fundamental role for the development of women's rights was played by the Economic and Social Council. While also being entrusted with overseeing the Commission on the Status of Women, aimed at achieving broader economic and social goals,³⁸ the Council was instrumental in the creation of the Commission on Human Rights which led to the development of the UN treaty system. Among its most significant achievements was the elaboration and almost universal acceptance of three main human rights instruments based on the principle of equality: the Universal Declaration of Human Rights adopted in 1948, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966.³⁹ At the same time, in 1951 the ILO adopted and opened for ratification Convention No. 100 on Equal Remuneration, establishing the principle of equal pay for work of equal value valid for all. As such, these developments played a fundamental role in embedding gender equality in the broader framework of international human rights law.

While general standards for equal treatment and rights in the workplace had already been introduced under the UDHR, ILO Convention No.100 and the ICESCR, it was thanks to feminist like Simone de Beauvoir and women's activism if the fight for women's economic rights never let up and instead spread throughout the world.⁴⁰ As such, 1975, or the year of the First World Conference of Women, was designated as the International Year of Women, and marking the beginning of the United

³⁶ D. L. Shelton, "An Introduction to the History of International Human Rights Law," p. 13.

³⁷ F. Viljoen, "International Human Rights Law: A Short History," p. 5.

³⁸ UN Charter, Art. 68.

³⁹ E. Riedel, "International Covenant on Economic, Social and Cultural Rights (1966)," Max Planck Encyclopaedia of Public International Law, *Oxford Public International Law*, Oxford University Press, 2011, para. 1. Available at: <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e836>

⁴⁰ T. Cushman, ed. *Handbook of Human Rights*, p. 295.

Nations Decade of Women (1976-1985).⁴¹ This momentum culminated in 1979 with the adoption of the UN Convention on the Elimination of All Forms of Discrimination Against Women. This legal instrument, which had the aim to “bring the female half of humanity into the focus of human rights concerns,”⁴² required all ratifying states to specifically eliminate discrimination against women and girls in all areas of life by taking positive actions for the achievement of complete gender equality. The standards for equality set in this Convention covered various key aspects of women struggles including the elimination of all forms of discrimination against women in the field of employment and the obligation to “prevent discrimination against women on the grounds of marriage or maternity,”⁴³ thus reinforcing the principle of substantive equality in the workplace introduced in the UDHR, the ILO Convention No.100 and the ICESCR.

1.2.2 Conceptualising Gender Discrimination in the Workplace

Article 1 of the ILO Convention No. 111 of 1958 defines the term discrimination as

Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.⁴⁴

Further, in its first article, the CEDAW defines discrimination specifically against women as “any distinction, exclusion or restriction made on the basis of sex [...] in the political, economic, social, cultural, civil or any other field.”⁴⁵ As such, gender discrimination in employment can be understood as the unfair or less favourable treatment of a job applicant or employee in accessing or remaining in the workforce based on their membership to a specific gender.⁴⁶

In practice, gender discrimination can manifest itself in a variety of ways. Despite the advancements in the implementation of both national and international equality legislations in fact, disparities persist in areas such as recruitment, promotions, leadership representation and, most commonly, compensation. Indeed, the phenomenon of the “gender wage gap,” in which women are paid less than men for performing the same or comparable work, reflects the persistent undervaluation of women’s labour and of female-dominated professions, while also being closely linked to the

⁴¹ J. Zollinger Giele and L. F. Stebbins, *Women and Equality in the Workplace*, ABC Clio, 2003, p. 5.

⁴² “Introduction,” Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

⁴³ CEDAW, Art. 11(2).

⁴⁴ ILO C111, Art. 1(a).

⁴⁵ “Introduction,” Convention on the Elimination of All Forms of Discrimination against Women.

⁴⁶ “Know Your Rights at Work: Gender Discrimination at Work,” *Equal Rights Advocates*. Available at: <https://www.equalrights.org/issue/economic-workplace-equality/discrimination-at-work/>

phenomenon of occupational segregation. Similarly, the phenomenon of the “glass ceiling,” refers to the invisible barriers that prevent women from advancing to senior managerial or executive positions, despite having the necessary qualifications and experience. Although these barriers may appear neutral or non-discriminatory, they continue to restrict women’s career progression. Furthermore, workplace harassment or a hostile work environment can also hinder women’s professional growth and limit their career prospects. Weak enforcement of laws and protective measures in fact, particularly when senior managerial positions are involved, can leave victims feeling unprotected and therefore dissuade them from pursuing further professional opportunities. As such, while entrenched gender norms suggesting that women should prioritise domestic responsibilities can lead employers to assume that they are less committed to their careers, thus justifying lower pay or fewer advancements opportunities, the general lack of accountability contributes to a culture of silence for fear of retaliation, ultimately perpetuating discriminatory practices.⁴⁷

Gender discrimination can therefore manifest itself in both overt and subtle ways and consequently is also commonly categorised as either direct or indirect. Direct discrimination refers to situations in which less favourable treatment is imposed on a group of people solely on the grounds of their membership to a specific gender. For example, a job announcement in which individuals of a specific gender are directly excluded would be considered a direct discriminatory act. Indirect gender discrimination is instead much harder to detect as it is often an apparently neutral law or practice which however has a disproportionate negative impact on a specific group of people. For instance, a job announcement containing specific requirements, such as height or weight restriction, unrelated to the job itself, but which would however limit people from a specific gender to be recruited for said job.⁴⁸

Consequently, while it is true that the primary causes of gender discrimination in the workplace are often rooted in cultural beliefs about traditional gender roles, issues related to institutional policies also play a crucial role in the perpetuation of inequality. More specifically, inconsistencies in the implementation and enforcement of equality laws are understood to be a central reason as to why gender discrimination persists. Inconsistencies in legislative implementation, including the absence of comprehensive hiring and workplace policies, can therefore contribute to discrimination in recruitment and employment practices. For instance, in the absence of specific policies, the selective use of specific gender-biased criteria during the hiring process, may disadvantage certain candidates.

⁴⁷ G. S. Mahantesh and R. Mamatha, “Gender Discrimination in the Workplace: Challenges to Equality in Employment,” *Indian Journal of Integrated Research in Law*, Vol. 5, No. 2, 2025, pp. 1148-1150 and J. Prakash, S. Dhamija, S. Chaudhury, K. Srivastava, “Women and the workplace,” *Industrial Psychiatry Journal*, Vol. 33, No. 2, 2024, pp. 201-207.

⁴⁸ I. Alam, D. Al-Amin, I. K. M. Anwarul, “Human Resource Practices & Gender Discrimination in Asian Countries,” *International Journal of Innovative Research and Creative Technology*, Vol. 1, No. 3, 2015, p. 278.

At the same time, inconsistencies in enforcement, especially in cases where protective measures have already been formally adopted, generally concern areas such as leave of absence and in particular maternity leave. As such, arbitrary enforcement of measures designed to prevent or address workplace harassment can further cement inequality in the workplace and discourage victims from seeking reparation. Therefore, as a result, inconsistent or selective application of these policies can undermine their protective purpose and reinforce discriminatory practices.⁴⁹

In this context, protection from gender discrimination in employment is a component of economic and social rights and therefore, as explained by Sir Nigel Rodley, it requires “a claim of action by governments”⁵⁰ in order to be realised. Thus, governments bear the responsibility to eliminate workplace gender discrimination through the implementation and enforcement of obligations undertaken upon ratifying international treaties and conventions. At the same time, they must also ensure the adoption and effective application of comprehensive national legislations to address and prevent such discrimination.⁵¹ Ensuring formal equality in the law, through the explicit prohibition of discrimination, is therefore an important first step towards establishing a legal framework that recognises and protects equal rights. However, this alone does not suffice to eradicate inequality in practice. For this reason, UN human rights treaties have started to adopt a more substantive approach for the realisation of gender equality, which in turn has begun to influence or directly require States to also implement a more substantive approach at domestic level.⁵² In employment, this would entail implementing positive measures able to eliminate all structural barriers to gender equality consequently guaranteeing *de facto* equality. As such, the realisation of gender equality in the workplace depends not only on formal recognition of rights in both national and international law, but also on the continuous commitment of States to address and dismantle these inequalities.

1.3 Core International Obligations Prohibiting Discrimination in the Workplace

According to Sir Nigel Rodley, “the foundations of modern international human rights law are to be found in the Charter of the United Nations,”⁵³ as Article 1 of this document states its aim of “promoting and encouraging respect for human rights and fundamental freedoms for all without

⁴⁹ D. Bobbitt-Zeher, “Gender Discrimination at Work: Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace,” *Gender & Society*, Vol. 25, No. 6, 2011, pp. 764-778.

⁵⁰ M. D. Evans, *International Law*, pp. 781-782.

⁵¹ *Ibid.*, p. 785.

⁵² T. Loenen, *The Conceptualization of Equality*, p. 40.

⁵³ M. D. Evans, *International Law*, p. 777.

distinction as to race, sex, language or religion.”⁵⁴ As previously discussed, this commitment to non-discrimination later became the base upon which contemporary legislations promoting gender equality have been built. However, when discussing the core international obligations prohibiting gender discrimination in employment, it is not sufficient to simply identify the main international human rights instruments built to define and protect those obligations. It is in fact equally important to analyse their content and practical implications. Indeed, international legal standards do not operate in the abstract and instead acquire meaning in the practical requirements they impose on States. Moreover, while international law does not concern itself nor prescribes the methods through which States should implement treaties and international customary law, it does require States to achieve concrete results.⁵⁵ Thus, this section will delve deeper into the key international conventions regulating gender equality in the workplace giving particular attention to the articles most relevant to the subject of this research.

1.3.1 The International Labour Organisation Conventions

Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination in Employment and Occupation, are the two ILO fundamental conventions on equality and non-discrimination in the field of employment.⁵⁶ Indeed, these two Conventions articulate the principle that all workers are entitled to equal professional opportunities and treatment within the workplace. Therefore, they establish standards on equal pay for work of equal value and the elimination of discrimination in access to employment, thus reflecting the ILO’s longstanding commitment to the promotion of fairness, inclusiveness, and decent work.⁵⁷ In this sense, their adoption served as an important step for turning ideals of equality into concrete obligations for States Member and continues to shape national labour laws and policies worldwide.

ILO Convention No. 100 on Equal Remuneration

In practice, the ILO Convention No. 100 on Equal Remuneration has the function of setting up international standards that would help reduce, if not to completely eliminate, the gender pay gap. According to the International Training Centre of the ILO, some of the main causes behind the gender pay gap are direct discrimination in pay, the vertical occupational segregation, also known as “glass ceiling,” and the horizontal occupational segregation, or “glass walls.” Whilst the first consists in

⁵⁴ UN Charter, Art.1.

⁵⁵ M. D. Evans, *International Law*, p. 383.

⁵⁶ International Labour Office, *The International Labour Organization’s Fundamental Conventions*, InFocus Programme on Promoting the Declaration, 2002, pp. 7-8.

⁵⁷ “History of the ILO,” International Labour Organisation.

women competencies not being properly evaluated and thus in women not being accordingly remunerated for their abilities, the second and third entail all the difficulties women encounter in being promoted to managerial positions while instead being channelled into specific low-income roles. As such, the ILO Convention n.100 aims at assisting States in the promotion and enforcement of the principle of equal remuneration for men and women workers as a way to close the gender pay gap.⁵⁸

To better understand what the Convention means by “equal remuneration for work of equal value,” it is useful to look at Article 1 of the Convention. In point (a), the term “remuneration” is understood to include “the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.”⁵⁹ As such, “equal remuneration” should be given the widest possible meaning. Thus, this term should not only encompass basic or minimum wages, which are often only a portion of the overall payment a worker receives, but should also include other elements of remuneration such as yearly benefits, coverage for transportation costs, housing allowances or payments for work phones and computers. Only if every aspect of “remuneration” is taken into account, and both men and women are afforded equal remuneration standards, will gender equality in employment be achieved. In addition, whilst the Convention does not require national laws’ terminology to be amended in case it differs from that of the Convention, it does require that the same concepts are applied to ensure that the principle of equal remuneration of men and women for work of equal value is applied as in accordance with the Convention.⁶⁰

Furthermore, the concept of “equal remuneration for work of equal value” is understood to go beyond the idea of “equal work.” It is in fact not limited to situations in which men and women who perform the same job should be paid equal wages, rather, it also encompasses cases in which men and women who do not have the same occupation but do perform tasks seen as being of “equal value” are still believed to be entitled to the same salary. This broader understanding becomes particularly significant in view of the persistent occupational segregation of the labour market where men and women are consistently concentrated in different sectors. As work predominantly performed by women tends to be undervalued and consequently underpaid, reliance on the notion of “equal work” alone would be insufficient to address structural wage inequalities. Thus, by requiring a critical assessment on the value of different job categories, the principle of “equal remuneration for work of equal value” helps reveal and address systemic discrimination and supports the reduction of the

⁵⁸ ItciloTV, “The ILO Equal Remuneration Convention, 1951 (No. 100), in a nutshell,” 2023.

⁵⁹ ILO C100, Art. 1(a).

⁶⁰ M. Oelz, S. Olney, M. Tomei, *Equal Pay: An Introductory Guide*, International Labour Organization, 2013, pp. 34-35.

gender pay gap.⁶¹ As such, this specification given to article 1 of the Convention becomes fundamental to the elimination of discrimination and the promotion of gender equality in the workplace.

Lastly, in regards to what ratifying States must do in order to apply the principles of this Convention, Article 2.1 states that

Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.⁶²

Then, Article 2.2 lists the different methods of application for this principle: national laws or regulations, machinery for wage determination, collective agreements between employers and workers, and a combination of various proactive measures.⁶³ In this sense, a uniform national minimum wage system for example, would help in the elimination of the gender pay gap considered that, as discussed earlier, women often tend to concentrate in the lower paid categories of workers. However, this Convention alone is not sufficient to the complete eradication of the gender pay gap and it is instead agreed upon that a more thorough tackling of gender stereotypes, including the gender denomination of jobs, will be required in order for men and women to truly gain equal access to employment in all sectors of the economy.⁶⁴

ILO Convention No.111 on Discrimination in Employment and Occupation

Concurrently, ILO Convention n.111 on Discrimination in Employment and Occupation affirms that any form of discrimination is detrimental to the principle of equality and therefore a direct violation of the Universal Declaration of Human Rights. As such, it defends the idea already present in the Declaration of Philadelphia that

All people, irrespective of race, colour, sex, religion, political opinion, national extraction, or social origin have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, economic security, and equal opportunity.⁶⁵

Then, as previously stated, Article 1 of the Convention defines discrimination as

⁶¹ *Ibid.*, pp. 38-39.

⁶² ILO C100, Art. 2(1).

⁶³ *Ibid.*, Art. 2(2).

⁶⁴ M. Oelz, S. Olney, M. Tomei, *Equal Pay*, pp. 50-53.

⁶⁵ “Convention 111 and International Women's Day,” International Labour Organisation, 2013. Available at: <https://www.ilo.org/resource/convention-111-and-international-womens-day>

Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.⁶⁶

Thus, according to the Convention, discrimination in the field of employment is to be understood as the difference in treatment based on the specific characteristics of the individual regardless of whether those characteristics match the requirements for a particular job or the individual's choice of occupation or vocational training.

Furthermore, the Convention's emphasis on the effects, such as limitations or deprivations of opportunities, deriving from a difference in treatment, indicates that the presence of intent is not a requirement to categorise a situation as discriminatory. According to the International Labour Conference in fact,

The limitations on the definition of discrimination that are introduced by reference to its intentional nature are not in accordance with the Convention, which covers all discrimination without referring to the intention of an author of a discriminatory act or even without there needing to be an identifiable author, as in the case of indirect discrimination or occupational segregation based on sex.⁶⁷

As such, under these standards, a practice or the implementation of certain measures can be deemed discriminatory even in the absence of deliberate bias, provided that they produce unequal outcomes or restricts opportunities for a specific group of individuals. Consequently, by focusing on effects rather than intent, this approach broadens the protective scope of the Convention, ensuring that both direct and indirect forms of discrimination are effectively addressed.

Lastly, according to Article 2 of the Convention, each ratifying member “undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”⁶⁸ As such, States Party should aim at eliminating discriminatory provisions and workplace practices, adopt national legislations promoting equality and ensuring effective enforcement of the adopted measures through, for example, a labour inspection system and with the help of specialised national bodies. These specifically, would be able

⁶⁶ ILO C111, Art. 1(1)(a).

⁶⁷ International Labour Organisation, *Equality in employment and occupation: General survey of the reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958*. Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 75th Session, Report III (Part 4B), Geneva, 1988, p. 22, para. 26.

⁶⁸ ILO C111, Art. 2.

to play a fundamental role in the handling of complaints and improvement of national legislations.⁶⁹ Thus, Convention No. 111 requires not only formal commitment to equality, but also the adoption of concrete and enforceable measures at national level aimed at eliminating all forms of discrimination and yield practical results for the principle of equal opportunity and treatment in employment and occupation.

1.3.2 The International Covenant on Economic Social and Cultural Rights

The International Covenant on Economic Social and Cultural Rights was opened for signature and ratification by the General Assembly in 1966 and came into force in 1976, thus becoming a legally binding source of law for all ratifying States. It constitutes one of the three components of the International Bill of Human Rights and builds upon the principles set out in Article 22 and 23 of the Universal Declaration of Human Rights (UDHR). Article 22, firstly introduces the idea that everyone “[...] has the right to social security and is entitled to realization [...] of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”⁷⁰ At the same time, Article 23 further develops this idea by stating that

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.⁷¹

As such, it is useful to look at articles 1, 2, 3, 6 and 7 of the International Covenant on Economic Social and Cultural Rights. The Covenant’s first article begins by declaring that “All peoples have the right of self-determination”⁷² and that “By virtue of that right they [can] freely determine their political status and freely pursue their economic, social and cultural development.”⁷³ This provision, similar in concept to Article 22 of the UDHR, establishes self-determination as the normative foundation of the Covenant, thus framing socio-economic rights as collective guarantees connected to people’s capacity to shape their own development.⁷⁴ Article 2.1 however, elaborates on the general obligations of States Party to the Covenant, states that

⁶⁹ ItciloTV, “The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in a nutshell,” 2023.

⁷⁰ UDHR, Art. 22.

⁷¹ *Ibid.*, Art. 23.

⁷² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 2200A(XXI), 1966, Art. 1(1), (ICESCR).

⁷³ *Ibid.*

⁷⁴ E. Riedel, “International Covenant,” para. 5.

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.⁷⁵

The use of the phrases like “to the maximum of its available resources,” “to take steps” and “by all appropriate means,” while introducing the principle of progressive realisation without burdening the States with immediate obligations of results, it also obfuscates the scope and content of States’ obligations and potentially harms the principle of self-determination enshrined in Article 1. This wording is also quite different from that of Article 2 of the Covenant of Civil and Political Rights, which instead pledges States to “respect and ensure”⁷⁶ the rights enshrined in the Covenant. The Committee on Economic Social and Cultural Rights has tried to correct this unclarity by arguing, in the General Comment No. 3, that while there are certain aspects of the socio-economic rights enshrined within the Covenant that cannot be realised in a short period of time, others, such as that to self-determination, should be of immediate effect.⁷⁷ It has also further stated that there is “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [of the Covenant] incumbent upon every State Party.”⁷⁸

Articles 2.2 and 3 are instead more closely connected to Article 23 of the UDHR as they also introduce the principle of non-discrimination. Through Articles 2.2 and 3 in particular, the Covenant positions the equality of rights for men and women as a core element of its normative nature which therefore calls for immediate and unconditional implementation. Article 2.2 requires States Party to guarantee that the Covenants’ rights are exercised without any kind of discrimination, while Article 3 imposes specific duties to ensure that both men and women can equally enjoy their socio-economic rights. Thus, these Articles require States Party to abolish any discriminatory law or provision from their national jurisdiction.⁷⁹

Article 6 and 7 of the Covenant are instead focused on elaborating on specific rights for individuals. More specifically, Article 6 establishes the right to work and Article 7 the right to just and favourable conditions of work, setting therefore minimum standards that States Party need to

⁷⁵ ICESCR, Art. 2(1).

⁷⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, Treaty Series, Vol. 999, 1966, Art. 2(1), (ICCPR).

⁷⁷ M. D. Evans, *International Law*, p. 783.

⁷⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, (E/1991/23), 1990, para. 10.

⁷⁹ E. Riedel, “International Covenant,” para. 11.

guarantee to their workers. In particular, Article 6(1) requires that “States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right,”⁸⁰ while Article 6(2) demands States Party to ensure that all measures taken to achieve the full realisation of these rights also include “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”⁸¹ While article 6 remains more generic and non-exhaustive in its scope,⁸² it establishes nonetheless specific obligations or at least minimum standards that States Party must achieve in access to employment. Then, as corroborated in the CESCR General Comment No.18, States Party should ensure “the right of access to a system of protection guaranteeing each worker access to employment” and the right to not be unfairly deprived from one.⁸³ They should avoid all discriminatory practices towards marginalised individuals or groups and instead develop a comprehensive system of protection.⁸⁴ Lastly, States Party should “adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers’ and workers’ organizations.”⁸⁵

While Article 6 mainly tries to ensure access to work, Article 7 elaborates precise States’s obligations to ensure the enjoyment of equal rights within the workplace. It recognises “the right of everyone to the enjoyment of just and favourable conditions of work,”⁸⁶ and explicitly requires fair wages and equal remuneration for work of equal value, decent living and work conditions, equal opportunities for promotions and work-life balance. Furthermore, through General Comment No. 23, States are required to implement the core obligation for “the satisfaction of, at the very least, minimum essential levels of the right to just and favourable conditions of work.”⁸⁷ As such, States Party are called to guarantee the non-discriminatory exercise of labour rights through national laws, establish comprehensive frameworks to combat gender discrimination in employment, implement fair

⁸⁰ ICESCR Art. 6(1).

⁸¹ *Ibid.*, Art. 6(2).

⁸² Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, (E/C.12/GC/18), 2006, para. 2.

⁸³ *Ibid.*, para. 6.

⁸⁴ *Ibid.*, para. 13-18.

⁸⁵ *Ibid.*, para. 31.

⁸⁶ ICESCR, Art. 7.

⁸⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, (E/C.12/GC/23), 2016, para. 65.

minimum wages, protect occupational safety and health, prohibit workplace harassment and ensure minimum standards on working hours, rest, and leave.⁸⁸ Notably, the Article also gives particular emphasis to gender equality by requiring “women [to be] guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”⁸⁹ However, in the General Comment No. 23, the Committee argues that, as progress in achieving gender equality in the context of labour rights has yet to be fully satisfactory, States should “take into account the different requirements of male and female workers”⁹⁰ and as such “take measures to address traditional gender roles and other structural obstacles that perpetuate gender inequality.”⁹¹

1.3.3 The Convention on the Elimination of All Forms of Discrimination against Women

Outside general human rights instruments, there are a few specialised UN treaties concerning equality and non-discrimination. Among these, there is the Convention on the Elimination of All Forms of Discrimination against Women. Adopted by the UN General Assembly in 1979 and came into force in 1981, the CEDAW became the “central and most comprehensive document”⁹² outlining the efforts for the advancement of women’s rights and the achievement of equal rights of men and women. Therefore, the Convention establishes “not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.”⁹³ In this sense, the CEDAW goes beyond formal recognitions of equality and requires State Party to address the structural barriers that perpetuate discrimination against women. Consequently, ratifying States are expected to adopt appropriate measures to “eliminate all forms of discrimination against women with a view of achieving women’s formal (*de iure*) and practical (*de facto*) equality with men in the enjoyment of their human rights and fundamental freedoms”⁹⁴

The means by which this should be accomplished are enshrined in the first five Articles of the Convention. These articles in fact, set out the aims of the Conventions and clearly define the States’ general obligations under it. Firstly, drawing upon the definition of Article 1 of the International

⁸⁸ *Ibid.*

⁸⁹ ICESCR, Art. 7.

⁹⁰ *General Comment No. 23*, para. 47.

⁹¹ *Ibid.*

⁹² “Introduction,” Convention on the Elimination of All Forms of Discrimination against Women.

⁹³ *Ibid.*

⁹⁴ Committee on the Elimination of Discrimination against Women, *General Recommendation No 25: Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, (A/59/38), 2004, annex I, para. 4.

Convention on the Elimination of All Forms of Racial Discrimination (ICERD),⁹⁵ Article 1 of the CEDAW opens by giving a thorough definition of what is meant by “discrimination against women,” and thus clarifying the principles of non-discrimination and equality that States should strive to incorporate in their national legal systems. Following, Article 2 directly require States Party to abolish all discriminatory national laws and practices against women and to actively engage in the establishment of legal protections of women’s rights to be ensured through competent national institutions such as tribunals. In the article, this is communicated through the use of the term “condemn” which is considered among the strongest form of disapproval and thus used to convey the “the States’ Party deep abhorrence of discrimination against women and [their] strong commitment to eliminating it.”⁹⁶

Notable is also the recurrent use, throughout the Convention, of the phrase “by all appropriate means” or “by all appropriate measures.” While this phrase allows States a certain degree of flexibility to individually select which specific measures to implement within their national legislations, it nonetheless requires them to adopt comprehensive measures capable to fully address the diverse nature of discrimination against women. These means of implementation not only have to be of legislative nature, but also, as stated in Article 18 of the Convention, of “judicial, administrative or other”⁹⁷ character. In the General Recommendation No. 25 and No. 28, the CEDAW Committee further argued that temporary special measures should also be included within the scope of the “appropriate measures” required to be implemented by States. In General Recommendation No. 25 in fact, the Committee states that States Party “are further invited to give details about any legislation concerning temporary special measures, and in particular whether such legislation provides for the mandatory or voluntary nature of temporary special measures.”⁹⁸ Then, General Recommendation No. 28 further reaffirms this view by arguing that the adoption of temporary special measures constitutes an aspect of the States’ obligation to ensure women’s rights to non-discrimination and equality.⁹⁹

The permissibility of special measures, whether temporary or not, within the Convention is also reinforced through Article 4. Indeed, the first paragraph argues that “the adoption [...] of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be

⁹⁵ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A commentary*. Oxford University Press, USA, 2012, p. 9.

⁹⁶ *Ibid.*, p. 75.

⁹⁷ CEDAW, Art. 18(1).

⁹⁸ *General Recommendation No. 25*, para. 30.

⁹⁹ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, pp. 77-78.

considered discrimination.”¹⁰⁰ It is however later specified that this statement is only valid for temporary promotional measures which should be discontinued when the objectives of equality between men and women have been achieved and that these should not entail “the maintenance of unequal or separate standards.”¹⁰¹ The same cannot be said for the special measures aimed at protecting maternity introduced in the second paragraph of Article 4. The paragraph in fact, states that “adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.”¹⁰² As such, the Convention argues that “maternity, insofar as it concerns the childbearing functions of pregnancy, childbirth and breast-feeding, represents a biological difference which requires permanent special measures for women.”¹⁰³ In this way, the Convention promotes substantive equality by requiring States to accommodate women’s reproductive role within their social and economic framework.¹⁰⁴

These articles then become the foundation for the principles of equality and non-discrimination specifically in employment and occupation introduced in Article 11. This is because the right to non-discrimination at every step of the employment process is understood to be essential firstly to women’s dignity as human beings and secondly for the development of their role in society outside the household. Thus, Article 11 establishes concrete international standards for women’s rights while keeping into account and recognising the multifaced nature of women’s employment and family circumstances. In particular, the Article’s first paragraph, based on the general principals of equality between men and women, deals with the obligations of States Party to completely eradicate discrimination and ensure the same employment rights. Following, the second paragraph, which will be analysed in more detail in Section 1.4.3, deals more closely with topics of prevention and elimination of discrimination against women specifically on the grounds of marriage and maternity, thus setting up the standards for the achievement of substantive equality in the workplace. As a result, the Article is able to provide for a broad set of measures aimed at securing women access to the labour market and ensuring equality of opportunity and treatment in employment.¹⁰⁵

On this note, Article 11(1) opens by reaffirming the States Party’s obligation to guarantee that men and women will enjoy the same rights “on the basis of equality between men and women.”¹⁰⁶ This choice of words ensures that substantive equality measures will be put in place in order for

¹⁰⁰ CEDAW, Art. 4(1).

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*, Art. 4(2)

¹⁰³ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, p. 125.

¹⁰⁴ *Ibid.* pp. 124-126.

¹⁰⁵ *Ibid.*, pp. 281-284.

¹⁰⁶ CEDAW, Art. 11(1).

women to enjoy the same rights as men, whilst also appreciating that, when it comes to the achievement of *de facto* equality, men and women's starting points are quite different. Following, and differently from other international human rights instruments, Article 11(1)(a) defines the right to work as “inalienable,”¹⁰⁷ thus guaranteeing women's economic freedom especially in those cases where they might be otherwise prohibited from participating in economic enterprises. Furthermore, while point (b) focuses on the right of women to enjoy the same employment opportunities as men with the inclusion of the same selection criteria to be applied, point (c) and (d) focus on the right to equal remuneration and equal benefits. Point (d) in particular, similarly to the ILO Convention No. 100 on Equal Remuneration, also calls for the principle of “equal remuneration for work of equal value.” On the basis of this Convention, the term “remuneration,” as used in the CEDAW, is also understood to comprehend “all additional emoluments”¹⁰⁸ other than simply the basic wage of workers. Lastly, point (f) goes beyond the right of decent and safe work environment and, with a point of view that has yet to be universally adopted, it requires States to also protect the “function of reproduction,”¹⁰⁹ thus creating a protective measure to equally safeguard both men and women. Thus, Article 11(1) establishes a comprehensive framework that addresses both formal and substantive equality in employment, whilst accounting for both structural and biological realities that shape women's participation in the labour market.¹¹⁰

1.4 Protection Of Worker's Rights in Relation to Family Responsibilities and Maternity

As examined in the previous section, the right to live free of discrimination and harassment just as well as the right to equality of treatment, are fundamental human rights that should be applicable in the workplace just as much as in every other area of life. Thus, socio-economic rights are rightfully enshrined in a range of international instruments, including the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and various Conventions adopted by the International Labour Office. Furthermore, as stated in Article 2(a) of the Declaration of Philadelphia, which constitutes part of the foundation of the ILO Constitution, “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual

¹⁰⁷ *Ibid.*, Art. 11(1)(a).

¹⁰⁸ ILO C100, Art. 1(a).

¹⁰⁹ CEDAW, Art. 11(1)(f).

¹¹⁰ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, pp. 285-298.

development in conditions of freedom and dignity, of economic security and equal opportunity.”¹¹¹ Consequently, maternity protection and worker’s rights in relation to family responsibilities serve as important mechanisms through which these rights can be effectively realised.

1.4.1 The International Labour Organisation Conventions

Since the ILO foundation in 1919, maternity was recognised as a “shared responsibility of government and society”¹¹² thus requiring provisions for its protection. Furthermore, it was linked to various positive benefits for both individuals, as it is a fundamental human right and an essential component to the achievement of gender equality, and for society as a whole as it plays an important role in economic growth and poverty reduction. Maternity protection in fact, allows women to carry out their childbearing role, as is their right, whilst avoiding being discriminated or completely left out of the labour market, which would instead threaten economic security and development by excluding a portion of a population’s able workers. As such, throughout its history, the ILO has published a series of Conventions regarding gender equality and maternity protection.¹¹³ Among these, four are considered fundamental: the Equal Remuneration Convention No. 100 of 1951 and the Discrimination (Employment and Occupation) Convention No. 111 of 1958, which have been analysed in previous sections of this thesis, and the Workers with Family Responsibilities Convention No. 156 of 1981 and the Maternity Protection Convention No. 183 of 2000, which will be instead at the centre of this section.

The ILO Convention No. 156 on Workers with Family Responsibilities

The ILO Convention No. 156 on Workers with Family Responsibilities was adopted during the 67th Session of the General Conference of the International Labour Organization in 1981 with the aim of establishing policies and measures to help workers reconcile work and family obligations. This Convention was adopted as a follow-up to the 1975 ILO Declaration on Equality of Opportunity and Treatment for Women Workers and its Resolution concerning a “plan of action with a view to promoting equality of opportunity and treatment for women workers,”¹¹⁴ and the CEDAW, as recognition that family responsibilities affect both families and society as a whole. Thus, this Convention, combined with Recommendation No. 165 of 1981, had the aim to create and promote “effective equality of opportunity and treatment in employment as between men and women workers

¹¹¹ International Labour Organisation, *Declaration of Philadelphia*, 1944, Art. II(a).

¹¹² ILO C183, Preamble.

¹¹³ International Labour Office, “Maternity Protection at work: Why is it important?”, *Conditions of Work and Employment Programme (TRAVAIL)*, 2012, pp. 1-3.

¹¹⁴ ILO C156, Preamble.

with family responsibilities and between such workers and other workers.”¹¹⁵ As such, workers with family responsibilities are allowed to engage in employment without being subjected to discrimination whilst also being able to reconcile work and family obligations, in particular through the provision of child-care.

The preamble of the CEDAW affirms that States Party should be aware that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.”¹¹⁶ Similarly, Convention No. 156 sets its scope to all categories of workers, regardless of their gender, partaking in economic activities whilst having “dependent children”¹¹⁷ or “other members of the immediate family who clearly need their care and support.”¹¹⁸ In this way, the Convention ensures that family obligations do not become ground for discrimination in employment or reason for termination. At the same time, the Convention promotes the adoption of national measures for the development and promotion of community and family services and childcare facilities¹¹⁹ which are understood to be indispensable to allow both parents to enjoy their right to employment and occupation. Recommendation No. 165 further develops the Conventions’ Articles by specifying concrete measures that States Party should adopt, within the framework of their national laws and practices, to create the employment and working conditions needed by workers with family responsibilities. As such, paragraph 18 requires States to put in place measures for the reduction of working hours¹²⁰ and flexible working schedules,¹²¹ paragraph 22(1) for the right to parental leave for both parents,¹²² and paragraph 24 for the establishment of child-care and family service needed to assist workers with family responsibilities.¹²³ Thus, all these initiatives had the explicit aim to promote gender equality by recognising and encouraging men’s equal sharing of family responsibilities.

The ILO Convention No. 183 on Maternity Protection

The first ILO Convention related to maternity protection and female workers’ right, dates back to 1919 and it is Convention n.003. This Convention was one of the firsts international gender equality

¹¹⁵ *Ibid.*

¹¹⁶ CEDAW, Preamble.

¹¹⁷ ILO C156, Art. 1(1).

¹¹⁸ *Ibid.*, Art. 1(2).

¹¹⁹ *Ibid.*, Art. 5(b).

¹²⁰ International Labour Office, *Promoting Gender Equality: Guide on ILO Conventions and Recommendations of particular concern to Women Workers*, 2004, p. 61, Art. 18(a).

¹²¹ *Ibid.*, Art. 18(b).

¹²² *Ibid.*, Art. 22(1).

¹²³ *Ibid.*, Art. 24.

instruments providing protection for female workers.¹²⁴ As such, through this Convention women employed in the public and private sector were given the right to a 12-weeks paid maternity leave, daily breaks for nursing and protection against dismissal during leave. Although revised by the ILO Convention No. 103 in 1952 and later by Convention No.183, Convention No. 003 was never closed to ratification thus remaining active to this day.¹²⁵ The Convention on Maternity Protection (Revised) No. 103 of 1952, expanded its scope of protection to women “employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage earners working at home.”¹²⁶ It also extended maternity leave for medically certified illnesses arising out of pregnancy or confinement¹²⁷ and expanding on the types of medical benefits provided.¹²⁸ Similarly to Convention No. 003, Convention No.103 was also revised through Convention No. 183 in 2000, however, unlike Convention No. 003, although it remains technically in force for States that have already ratified it, it is no longer open to new ratifications.¹²⁹

Lastly, the ILO Convention No.183 on Maternity Protection, was adopted during the 88th Session of the General Conference of the International Labour Organization in 2000 as a revision of the 1952 ILO Convention No. 103. This revision happened following the implementation of several international instruments adopted between 1952 and 2000 and aimed at enhancing the protection of women’s rights, such as the CEDAW, and the ILO Convention No. 156 on the Rights of Workers with Family Responsibilities.¹³⁰ Thus, in the revised Convention, maternity leave was raised from twelve to fourteen weeks¹³¹ and then further increased to eighteen weeks in Article 1(1) of the Recommendation No. 191. Similarly, cash benefits were raised from the minimum of “two-thirds of the woman’s previous earnings”¹³² set in Article 6(3) of the Convention to “the full amount”¹³³ in the Recommendation. The revised Convention also strengthened women’s rights to employment protection whilst also requiring States to establish protective measures with the aim of ensuring that maternity would not become a source of discrimination in the employment process. In particular,

¹²⁴ E. C. Landau, and Y. Beigbeder, *From ILO Standards to EU Law: The Case of Equality between Men and Women at Work*, Martinus Nijhoff Publishers, 2008, p. 134.

¹²⁵ International Labour Organisation, “Maternity protection,” *Conditions of Work and Employment Programme*, Information Sheet No. WF-4, 2004, p.1.

¹²⁶ International Labour Office, *Promoting Gender Equality*, p. 41, Art. 1.

¹²⁷ International Labour Office, *Promoting Gender Equality*, p. 42, Art. 3(e) and 3(f).

¹²⁸ *Ibid.*, Art. 4.

¹²⁹ *Ibid.*, footnote 1, p. 41.

¹³⁰ ILO C183, Preamble.

¹³¹ *Ibid.*, Art. 4(1).

¹³² *Ibid.*, Art. 6(3).

¹³³ International Labour Office, *Promoting Gender Equality*, p. 52, Art. 2.

Article 9 required States to implement prohibitive measures towards demanding women to present a test for pregnancy during the job application process.¹³⁴

While the revised Convention introduced several improvements and additions compared to the 1952 version, conveying the influence that other international women's right instruments had on it, it is nonetheless important to notice that many of its provisions remained significantly constrained by national legislations. In particular, the Convention frequently relies on phrases such as "as determined by national law and practice,"¹³⁵ "in accordance with national laws and regulations, or in other manner consistent with national practice"¹³⁶ and "except when required by national law or regulation"¹³⁷ which appear in a few of the Conventions more demanding and substantive articles. This wording was deliberately adopted to enhance the flexibility of the Convention and to accommodate a wider range of diverse legal systems and socio-economic contexts among ILO States Member. This was done to facilitate the ratification of the revised Convention by a higher number of States as openly supported by the ILO Employers Group, the Secretariat, and some industrialised countries.¹³⁸ However, this same flexibility also has the effect of transferring a considerable degree of decisional authority to the national level. As a result, national authorities were granted more discretion, and therefore more freedom, in the interpretation and implementation of the terms and conditions set in the Convention.

1.4.2 The International Covenant on Economic Social and Cultural Rights

While Articles 6 and 7, previously analysed, focus more on the relationship of dependency between individual workers and employers, thus setting more general objectives for the protection of workers, Article 10 of the Covenant centres around the protection of a group of people, in this case the family unit and more specifically mothers and children. Thus, paragraph 1 of the Article defines the concept of family as "the natural and fundamental group unit of society"¹³⁹ and delineates States' obligations of protection and support towards it. Then, paragraph 2 focuses on the protective measures that States should implement for women before and after pregnancy and lastly, paragraph 3 outlines special measures of protection and assistance towards children and young persons. The Article, however, remains generic, lacking specific guidance on the measures to be adopted by States, and the absence of General Comments from the Committee on Economic, Social and Cultural Rights

¹³⁴ ILO C183, Art. 9(2).

¹³⁵ *Ibid.*, Art. 4(1).

¹³⁶ *Ibid.*, Art. 6(1).

¹³⁷ *Ibid.*, Art. 9(2).

¹³⁸ E. C. Landau, and Y. Beigbeder, *From ILO Standards to EU Law*, p. 136.

¹³⁹ ICESCR, Art. 10(1).

(CESCR) further complicates its interpretation. Still, as argued by Jacobs and Lehoczky in their analysis of this article, “the overlaps between Article 10(1) – (2), and the other ICESCR provisions on substantive rights are reflected in and even underlined by the General Comments and also by CESCR Concluding Observations [on those other provisions]”¹⁴⁰ and that therefore “the fairly detailed guidance provided in these and other documents on implementation requirements helps to identify the frame work of state obligations under Article 10.”¹⁴¹

Content and scope of Article 10(1) and (2)

Before delving deeper into the interpretation of Article 10 and the obligations it imposes on States, it is essential to understand the content and scope of its provisions. Firstly, it is important to note that while Article 10 is located in Part III of the Covenant (Articles 6-15), which contains provisions on specific rights of individuals,¹⁴² it never directly acknowledges any “rights” and therefore obligations of States. Differently from other articles in this same section in fact, Article 10 consistently employs the term “should” thus maintaining a broader and more flexible scope in its wording. This can be linked to the history of the ICESCR’s drafting process, during which “softer” language was adopted as a way to facilitate ratification from a larger number of States. As such, keeping into consideration the historical context of the drafting, it is unsurprising that protections relating specifically to women and mothers were framed in less constraining terms for States. However, as argued by Jacobs and Lehoczky, since the beginning the CESCR has made clear that no difference were to be made between States obligations enshrined in Article 10 and those arising in relation to other articles of the Covenant.¹⁴³ Consequently, despite the language employed, Article 10 imposes obligations on States in line with other rights regulated by the Covenant.

Article 10(1) can be considered the framework for the understanding of Article (2). It requires States Party to ensure “the widest possible protection and assistance”¹⁴⁴ to the family and, consequently, to protect each individual member as to enable the formation and maintenance of a family unit. Furthermore, as the protection and assistance requested must be of the broadest nature, they must also encompass employment and family obligations. Thus, while the wording in the paragraph itself remains less explicit than that of paragraphs 2 and 3, when interpreted under the lens of the CEDAW and of the relevant ILO Conventions, which will be analysed in the following section,

¹⁴⁰ K. Lörcher, N. Bruun, and A.T. Ribeiro, ed. *International Covenant on Economic, Social and Cultural Rights and the Employment Relation*, Hart Publishing, Dublin Ireland, 2025, p. 487.

¹⁴¹ *Ibid.*

¹⁴² E. Riedel, “International Covenant,” para. 5.

¹⁴³ K. Lörcher, N. Bruun, and A.T. Ribeiro, ed. *International Covenant*, p. 517.

¹⁴⁴ ICESCR Art. 10(1).

it is possible to infer the specific individual rights that should be protected. Accordingly, women should be protected in their right to work and participation in employment irrespective of their family responsibilities, while men should be protected in their right to participate in family life and to assume their responsibilities within the household. In practice, this means that States Party have to ensure the well-being and survival of the family unit through both material benefits, like providing childcare services, housing, or healthcare protection, and ensuring employment rights that would allow parents to balance their work and family responsibilities. As such, provisions introduced in other ICESCR articles and other international instruments, like parental leave or working hours flexibility, should be included among the measures that States Party must implement for the protection of the family unit.

Compared to paragraph 1, the scope of paragraph 2 is extremely specific. While the former's use of the term "dependent children"¹⁴⁵ does not indicate a specific timeframe for the application of the provision, the latter is focused on the "period before and after childbirth,"¹⁴⁶ thus creating a specific temporal boundary. As such, Article 10(2) requires States to protect women's health and social rights only in the period surrounding childbirth. In this regard, as argued by both Saul, Kinley and Mowbray (Saul *et al.*) and Jacobs and Lehoczky, the absence of General Comments from the CESCR renders the interpretation of both this timeframe and the evolution and expansion of the Article's scope more challenging.¹⁴⁷ In regards to the former, Saul argues that, given the wording of the provision and the CESCR's failure to address States' obligations in relation to the first sentence of paragraph 2,¹⁴⁸ it is likely that the provision covers only the period of maternity leave already recognised in other international instruments. Concerning the latter instead, Jacobs and Lehoczky argue that "social and legal developments have extended the narrow meaning in respect of both the personal and the material scope of the rights under Article 10(2)."¹⁴⁹ As such, the term "mothers," as used in the first sentence of this article, has recently gained a broader meaning. As argued by Saul *et al.* in fact, the original meaning was limited to the protection of "'natural' mothers," intended as only "those who physically give birth," thus seemingly excluding "social mothers" and "other parents."¹⁵⁰ Over time however, this interpretation has broadened considerably. Indeed, as argued by both Saul *et al.* and Jacobs and Lehoczky, this meaning was expanded to also include "other 'mothers' or primary carers (of any

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*, Art. 10(2).

¹⁴⁷ K. Lörcher, N. Bruun, and A.T. Ribeiro, ed. *International Covenant*, p. 501 and Ben Saul, David Kinley, Jaqueline Mowbray, *The International Covenant: Commentary*, p. 798.

¹⁴⁸ The first sentence of Article 10(2) states that "Special protection should be accorded to mothers during a reasonable period before and after childbirth."

¹⁴⁹ K. Lörcher, N. Bruun, and A.T. Ribeiro, ed. *International Covenant*, p. 501.

¹⁵⁰ Ben Saul, David Kinley, Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford University Press, 2014, pp. 795-797.

gender) who may require assistance in establishing a new child within a family”¹⁵¹ thus also covering fathers and other parental and guardian figures who therefore should be protected by any potential negative impact that these responsibilities could have on their employment.

Interpretation of the provisions under Article 10 of the ICESCR

Given the lack of interpretative guidance specifically addressing Article 10, paragraphs 1 and 2 of this Article must draw on a wide range of provisions both within and beyond the ICESCR to inform their interpretation. Thus, in regards to other ICESCR provisions, Article 10 (1) and (2), can be interpreted under the principles of equality and non-discrimination introduced in Articles 2(2) and 3 as well as the provisions on the right to work and the right to just and favourable work conditions presented in Articles 6 and 7 respectively. In particular, Articles 2(2) and 3 require that States Party ensure the enjoyment of the rights enshrined in the Covenant without discrimination of any kind and guarantee equal rights for both men and women. Consequently, in the context of Article 10 (1) and (2), these principles should ensure protection towards all members of the family unit as to allow its proper development as well as guaranteeing working mothers and fathers the continuation of their role in employment without any discrimination resulting from their family responsibilities.

Following, although Article 6 does not mention maternity or family specifically, it nonetheless can be interpreted as a contributor to the survival of the family unit and as a protective measure towards working mothers. Through the General Comment No. 18 in fact, Article 6 sets to protect the right to work as “[it] contributes at the same time to the survival of the individual and to that of his/her family”¹⁵² and further that “pregnancies must not constitute an obstacle to employment and should not constitute justification for loss of employment.”¹⁵³ As a result, Article 10 (1) and (2) should ensure equal opportunities in employment to all working parents as this constitutes an essential condition for guaranteeing the livelihood and survival of their families whilst also serving as a necessary protective measure for working mothers against employment related disadvantages arising from their family responsibilities.

On the other hand, Article 7 is more directly linked with the rights of the family unit and working mothers in its wording. In the General Comments No. 23 in fact, the right to safe and healthy working conditions analysed in Article 7(b), states that “national policies [...] should take into account specific risks to the safety and health of female workers in the event of pregnancy”¹⁵⁴ and that therefore

¹⁵¹ *Ibid*, p. 797.

¹⁵² *General Comment No. 18*, para. 1.

¹⁵³ *Ibid.*, para. 13.

¹⁵⁴ *General Comment No. 23*, para. 26.

“workers should be able to monitor working conditions without fear of reprisal,”¹⁵⁵ thus arguing in favour of working mothers’ right to decent and safe working conditions. Following, paragraph 31 and 32 establish that in regards to the right to equal opportunity for promotion “there should be no place for irrelevant criteria such as personal preference or family”¹⁵⁶ and further that

Equality in promotion requires the analysis of direct and indirect obstacles to promotion, as well as the introduction of measures such as training and initiatives to reconcile work and family responsibilities, including affordable day-care services for children and dependent adults.¹⁵⁷

Then, paragraphs 36 and 46 argue in favour of measures that, while helping workers reconcile their employment and family obligations, also “respond to the different requirements and challenges faced by male and female workers.”¹⁵⁸ Accordingly, all provisions presented in Article 7 must be respected within the limits of Article 10(1) and (2).

Beyond its interpretation through the lens of other ICESCR provisions, Article 10 can also be interpreted through other international instruments. Thus, Article 16(3) of the UDHR can be understood as the foundation of the concept of family unit expressed in Article 10(1) while Article 25(2) as that of Article 10(2) and (3). Article 16(3) defines the family as “the natural and fundamental group unit of society,”¹⁵⁹ consequently entitled to enjoy all types of protective measures from both States and society at large. At the same time, Article 25(2) sets the foundations of protection required from States to protect both motherhood and childhood which however, as argued by Jacobs and Lehoczy, at this point still had a paternalistic undertone.¹⁶⁰ It was in 1979 with the adoption of the CEDAW that this negative connotation started to change. As will be discussed in greater detail in Section 1.4.3, Article 5(e) introduces the idea that States Party have a positive obligation to change the social and cultural patterns of society, with the aim of eliminating all discriminatory practices based on stereotyped roles of men and women and, consequently, establishing *de facto* equality. As such, the language in specific CEDAW articles related to family responsibilities and maternity is kept gender neutral, as it’s the case of Article 11, while the CEDAW Committee has argued in favour of reducing some of the protective measures, originated from patriarchal views on motherhood, which have at times been used as pretext to discriminate towards women’s access to employment. In turn, this has led to, particularly in relation to Article 10(2), to a more progressive interpretation of both paragraphs and to the broadening of the concept of “mothers” to include second parents, such as

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*, para. 31.

¹⁵⁷ *Ibid.*, para. 32.

¹⁵⁸ *Ibid.*, para. 36 and 46.

¹⁵⁹ UDHR, Art. 16(3).

¹⁶⁰ K. Lörcher, N. Bruun, and A.T. Ribeiro, ed. *International Covenant*, p. 489.

fathers, and “‘social’ mothers” as defined by Saul. Lastly, this more progressive interpretation of Article 10 was also supported by the ILO Conventions No. 156 and No. 183, and their respective Recommendation, as they both led to new developments in the field of parental rights and maternity protection in connection with employment rights and responsibilities. Consequently, in its widest scope of interpretation, Article 10 is able to reinforce and support provisions of non-discrimination in employment while implementing measures to achieve *de facto* equality.

1.4.3 The Convention on the Elimination of All Forms of Discrimination against Women

The Articles of the CEDAW previously analysed in Section 1.3.3, define the general principles of equality and non-discrimination applicable to women and establish States Party’s obligations to eliminate the discrimination of women in all fields, including, in the case of Article 11(1), the specific field of employment and occupation. Building on these foundational principles, Article 11(2) specifically addresses the obligations of ratifying States concerning the protection of worker’s rights in relation to maternity and family responsibilities. In this aspect, Article 11 adopts a substantive and *de facto* equality approach, requiring States Party to implement measures aimed at eliminating structural discrimination that prevents women’s effective right to work. Such measures include addressing any stereotype of women’s role in society, as required under Article 5(a),¹⁶¹ in both the public and private sector, as in accordance with the broader obligations under Article 2(e) to “eliminate discrimination against women by any person, organization or enterprise.”¹⁶²

Article 11(2) opens by arguing that States Party should take all appropriate measures to prevent discrimination against women on the grounds of “marriage or maternity,”¹⁶³ as a necessary foundation to ensure women’s right to work. This approach is rooted in the general principle of equality articulated in the first five Articles of the Convention and specified in Article 11(1) in relation to employment and occupation. Such a principle is fundamental to counteract the societal disadvantages women face in their access and participation in economic activities and to challenge the gender stereotypes that contribute to the undervaluation of their labour. Accordingly, Article 11(2) requires States Party to adopt proactive measures such as ensuring paid maternity leave, ensuring provisions for childcare facilities, and providing protectory measures against harmful work during pregnancy. In

¹⁶¹ Art. 5(a) of the CEDAW states that States Party shall “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

¹⁶² CEDAW, Art. 2(e).

¹⁶³ *Ibid.*, Art. 11(2).

doing so, women's employment status is safeguarded, enabling them to continue enjoy their effective right to work.¹⁶⁴

Women's right to work is also the central focus of Article 11(2)(a). This Article in fact prohibits "the imposition of sanctions or dismissal on the ground of pregnancy or of maternity,"¹⁶⁵ as it would directly impact women's enjoyment of their right to participate in economic activities. As such, the term "dismissal," as used in the Article, should be understood in its broadest meaning. Thus, it should encompass not only direct termination of employment, but should also be extended to those situations in which the deterioration of the employee's work condition results in constructive dismissal. Moreover, it should include any discriminatory practices that would hinder pregnant women or women with young children to be recruited or retained in their occupation. Thus, this provision seeks to ensure that maternity does not constitutes a barrier to women's access to, or continuity in, employment.¹⁶⁶

Article 11(2)(b) instead, introduces the concept of women's right to "maternity leave with pay or with comparable social benefits"¹⁶⁷ as a way to integrate women's childbearing role in the employment contract. While, as previously discussed, the ILO Convention No. 183 of 2000, similarly to the ILO Convention No.103 of 1952, sets these standards "at a level which ensures that the woman can maintain herself and her child in proper condition of health and with a suitable standard of living"¹⁶⁸ and still "not [...] less than two-thirds of the woman's previous earnings,"¹⁶⁹ the ILO Recommendation No. 191 of 2000 argues instead that "the cash benefit to which a women is entitled [...] should be raised to the full amount of the woman's previous earnings."¹⁷⁰ As such, the combined framework of Convention No.183 and Recommendation No.191 establishes the principle according to which, in order to effectively protect and support women in the labour marker, maternity leave benefits must be provided, as most women would struggle to afford maternity leave without pay.¹⁷¹

While the provisions of Article 11(2)(b) focused on the prohibition of discrimination towards women on the basis of their childbearing role within society, Article 11(2)(c) encourages the establishment "of the necessary supporting social services to enable parents to combine family

¹⁶⁴ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, p. 298.

¹⁶⁵ CEDAW, Art. 11(2)(a).

¹⁶⁶ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, p. 299.

¹⁶⁷ CEDAW, Art. 11(2)(b).

¹⁶⁸ ILO C183, Art. 6(2).

¹⁶⁹ *Ibid.*, Art. 6(3).

¹⁷⁰ International Labour Office, *Promoting Gender Equality*, p. 52, Art. 2.

¹⁷¹ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, p. 301.

obligations with work responsibilities and participation in public life.”¹⁷² The CEDAW was the first international convention to recognise and “encourage,”¹⁷³ as by the wording it could not impose, States Party to provide childcare services which would allow parents to reconcile family obligations with work-life. Then, shortly after, the ILO Convention No. 156, in conjunction with the ILO Recommendation No. 165, set out specific measures that States Party, within the framework of their national legislations, would have to adopt for the development and promotion of community and family services and childcare facilities. Lastly, although it is implicitly understood that it is women, who continue to be the primary caregivers and who face the greatest discrimination in employment, who are the main beneficiaries of this Article, it is noteworthy that the terminology used is kept gender neutral. As such, fathers’ rights are also, arguably, incorporated within the scope of this article and are given entitlement to benefit from measures aimed at reconciling work and family responsibilities therefore setting the foundations for *de facto* equality.

To conclude, Article 11(2)(d) bears great resemblance to Article 11(1)(f), however while the latter focuses more generically on the protection of the “function of reproduction”¹⁷⁴ for both men and women, the former is centred specifically around pregnancy. However, as there have been cases in which these protective measures have been used as a pretext to discriminate against women’s access to employment, the Committee on the Elimination of Discrimination against Women has expressed its concerns towards them. As such, during its 22nd session for example, the Committee has urged the State Party to “review its occupational health and safety legislation and standards,”¹⁷⁵ with the aim of “reducing protective standards, which often have a discriminatory effect on women in general and pregnant women in particular.”¹⁷⁶ It is understood that such a reduction was not aimed towards standards genuinely required for the protection of women’s health, but solely towards the elimination of protective measures that, in practice, serve to discriminate against women.

1.5 Monitoring Mechanisms and Individual Complaints

The introduction of a monitoring system aimed at overseeing the implementation of human rights instruments can be traced back to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. It is in the UDHR in fact, that the groundwork for the monitoring

¹⁷² CEDAW, Art. 11(2)(c).

¹⁷³ *Ibid.*

¹⁷⁴ CEDAW, Art. 11(1)(f).

¹⁷⁵ UN General Assembly, *Report of the Committee on the Elimination of Discrimination against Women*, (A/55/38), 2000, para. 374.

¹⁷⁶ *Ibid.*

mechanisms, formally known as treaty bodies, was established.¹⁷⁷ However, as argued by Sir Nigel Rodley, since the early days it was evident that States would subject their own human rights practices to international scrutiny only on the basis of voluntary adherence to a specific treaty. Thus, nine treaty bodies (with the addition of a tenth one created by an Optional Protocol of the UNCAT) were established for each of the main UN human rights treaties.¹⁷⁸ These treaty bodies are generally composed by a committee of independent experts in the field covered by the respective treaty, and usually nominated and elected by States Party. Their mandate is to examine States' reports and monitor the implementation of the rights enshrined in the treaty in question. To this end, after reviewing the States' reports, the committee issues its findings through a set of concluding observations in which it highlights both the progress achieved as well as areas of concern in which the States should put more effort.¹⁷⁹

Committees are also often entrusted with the competence to examine individual complaints. While States were generally reluctant to accept international scrutiny through the lens of individual complaints procedures, they were more willing to agree to the establishment of such mechanisms on an optional basis. This approach enabled States to ratify human rights treaties and meet international expectations without automatically agreeing to individual complaints procedures. At the same time, those States Party prepared to accept this additional layer of scrutiny could do so by ratifying an Optional Protocol (OP) or, in certain cases, by making a specific declaration, under Article 14 of the ICERD and Article 22 of the UNCAT, recognising the competence of the Committees to receive individual complaints. The complaints thus received would be analysed and commented upon by the Committee in a process modelled on juridical practice, but would carry no legally binding obligations for States. Still, the case law emanating from these deliberations would become public knowledge and widely employed by lawyers to interpret human rights treaties. Nevertheless, a practice has developed whereby, once an individual complaint has been submitted to a committee and "if 'irreparable harm' seems imminent" towards the person or the group subject of the complaint, the State is expected to refrain from taking the contested action until the end of the examination period of the case. Failure to comply with such interim measures would be regarded as a violation of the instrument establishing the individual complaints procedures.¹⁸⁰

¹⁷⁷ The UN Human Rights Office of the High Commissioner, *The Human Right Treaty Bodies: Protecting Your Rights*, 2015, p. 2.

¹⁷⁸ "The Core International Human Rights Instruments, and their monitoring bodies," the UN Human Rights Office of the High Commissioner. Available at: <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>

¹⁷⁹ M. D. Evans, *International Law*, p. 799.

¹⁸⁰ *Ibid.*, pp. 800-801.

1.5.1 Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights, the ICESCR monitoring body, follows this general structure. Defined in Part IV of the Covenant (Articles 16-25), it delineates provisions for the monitoring of States' implementation of the Covenant and for cooperation between the UN Economic and Social Council (ECOSOC), the Committee itself and other specialised agencies. In the initial phase of the drafting process for both the ICCPR and the ICESCR, there was a consensus on the need for periodic State reporting as a way to supervise States Party's practical implementation of the two Covenants. However, due to the States's reluctance to recognise the importance of socio-economic rights, the idea of subjecting themselves to periodic monitoring was quickly dismissed. As such, while implementation of the ICCPR was, since the beginning, administrated by a specialised treaty body, the ICESCR was left without a monitoring mechanism.¹⁸¹ Then, through decision 1978/10 of 1978, the ECOSOC resolved to establish a sessional working group on the implementation of the ICESCR "for the purpose of assisting the Council in the consideration of reports submitted by States parties to the Covenant."¹⁸² However, in 1985 the ECOSOC understood that this monitoring instrument lacked independence and effectiveness.¹⁸³ Thus, through Resolution 1985/17, the ECOSOC renamed this working group as the Committee on Economic, Social and Cultural Rights and gave it both the structure and the power of a specialised treaty body.¹⁸⁴ The CESCR then held its inaugural session in 1987.

Although the CESCR derives its authority from the ECOSOC instead of the Covenant itself, it still works like any other specialised treaty body. As such, Articles 16 and 17 of the ICESCR delineate how this monitoring body works and what are States Party's obligations in this regard. Article 16 requires States to "undertake to submit [...] reports on the measures [...] adopted and the progress made in achieving the observance of the rights recognized [in the Covenant]"¹⁸⁵ and how these reports will then be shared with specialised agencies "in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments."¹⁸⁶ At the same time, Article 17 clarifies the scope of such reports stating that they "may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant."¹⁸⁷ These standards are then further reinforced in Rule 58(1) of the Rules of

¹⁸¹ E. Riedel, "International Covenant," para. 19-20.

¹⁸² United Nations Economic and Social Council, *Resolution 1985/17*, (E/RES/1985/17), 1985, Preamble.

¹⁸³ E. Riedel, "International Covenant," para. 20.

¹⁸⁴ United Nation Economic and Social Council, *Resolution 1985/17*, para. (a), (b) and (f).

¹⁸⁵ ICESCR, Art. 16(1).

¹⁸⁶ *Ibid.*, Art. 16(2)(b).

¹⁸⁷ *Ibid.*, Art. 17(2).

Procedure of the CESCR, which also states that States Party “shall submit their initial reports within two years of the entry into force of the Covenant”¹⁸⁸ and that “thereafter periodic reports [shall be submitted] at five-year intervals.”¹⁸⁹

Following, Article 18 introduces the idea that the Economic and Social Council should make arrangements with the specialised agencies in order to receive their reports on the “progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities.”¹⁹⁰ Then, Articles 19 through 22 further encourage the active involvement of these agencies in the promotion and implementation of the ICESCR, notably by inviting them to submit general recommendations, reports, and specialised comments to the ECOSOC. Through this cooperative framework the Covenant seeks to integrate the expertise of specialised agencies into its supervisory systems with the aim of strengthening international monitoring and therefore facilitating the realisation of the rights enshrined in the Covenant.

The concept of international cooperation as a fundamental step in the realisation of the rights enshrined in the ICESCR is also reinforced by Article 23. Here in fact, States Party are required to agree that

International action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.¹⁹¹

As such this provision highlights that the realisation of ICESCR rights, although primarily a duty of States Party, should still be supported through international cooperation and shared institutional support.

The ICESCR Optional Protocol

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP), was adopted by the UN General Assembly in 2008 through Resolution 8/2, and opened for signature the following year. Article 1 confers upon the CESCR the competence to receive and consider individual complaints regarding violations of any of the rights enshrined in the ICESCR,

¹⁸⁸ Committee On Economic, Social and Cultural Rights, *Rules of Procedure of the Committee: Provisional rules of procedure adopted by the Committee at its third session (1989)*, E/C.12/1990/4/Rev.1, 1993, Rule 58(1), p. 17.

¹⁸⁹ *Ibid.*, Rule 58(2).

¹⁹⁰ ICESCR, Art. 18.

¹⁹¹ *Ibid.*, Art. 23.

while limiting this procedure to those States that have ratified both the ICESCR and its OP.¹⁹² Following, Article 5 delineates the interim measures a State Party to the OP is required to adhere pending the resolution of the case. As such, in “exceptional circumstances”¹⁹³ a State may be required to take measures aimed at avoiding “possible irreparable damage to the victim or victims of the alleged violations.”¹⁹⁴ Then, Article 7 affirms the Committee’s commitment to reaching a friendly settlement between the victim and the State Party and therefore affirms its role as mediator between the two parties,¹⁹⁵ and lastly Article 9 requires States to follow-up, after due consideration but within six months, on the views of the Committee by delineating all the measures and procedures employed to overcome the previous violation.¹⁹⁶

1.5.2 Committee on the Elimination of Discrimination against Women

Similarly to the previous international human rights instruments, part five of the CEDAW delineates the establishment and the scope of activity of the Committee on the Elimination of Discrimination against Women which held its first session in 1982. Thus, Article 17 of the CEDAW establishes the role of the Committee, gives it authority, and defines its aim to improve the implementation of the treaty by monitoring the States Party compliance through the examination of periodic reports. The Article further delineates the composition of the Committee as consisting of eighteen “experts of high moral standing and competence in the field covered by the Convention,”¹⁹⁷ number which increases to twenty-three upon the ratification or accession to the Convention by the thirty-fifth State.¹⁹⁸ Although these experts are intended to reflect a balanced representation of men and women, the CEDAW Committee is the only treaty body in which women constitute a significant majority as “very few men have been members during its existence.”¹⁹⁹

Following, Article 18 defines reports submitted by States to the Committee as the main system for assessing the legislative, judicial, or administrative measures adopted to ensure the practical implementation of all rights enshrined in the CEDAW.²⁰⁰ As such, it delineates the periodicity with which the States should submit their reports, “within one year after the [Convention’s] entry into force

¹⁹² UN General Assembly, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, A/RES/63/117, 2008, Art. 1.

¹⁹³ *Ibid.*, Art. 5(1).

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*, Art. 7(1).

¹⁹⁶ *Ibid.*, Art. 9(2).

¹⁹⁷ CEDAW, Art. 17(1).

¹⁹⁸ *Ibid.*

¹⁹⁹ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, p. 480.

²⁰⁰ CEDAW, Art. 18(1).

in the States concerned”²⁰¹ and following “at least every four years and further whenever the Committee so requests.”²⁰² As acknowledged by the Committee itself however, States have rarely complied with this prescribed reporting timeline. Instead, delays and failures to submit reports have become a recurring problem across human rights treaties monitoring bodies, often attributable to either the administrative burden of reporting, especially for smaller States, or, more simply, to a lack of political commitment on the part of governments. To address this problem, the Committee has sought to encourage States Party to fulfil their reporting obligations by issuing reminders and by allowing States to combine two or more reports on the condition of women in their jurisdiction. Such combined reports would be accepted on the condition that they remained detailed in their description of both the positive measures adopted and the persisting critical areas. Lastly, neither Article 17 nor 18, delineate how the Committee is to carry out this monitoring procedure, thus leaving it with the flexibility to adapt its *modus operandi* as to ensure that its consideration of States’ reports is as effective as possible.²⁰³

Articles 19 through 21 then delineate the Committee’s authority to adopt its own rules of procedure, determine the frequency and location of its sessions, and require the Committee and submit an annual report to the UN General Assembly on the status of its activities, including recommendations and suggestions based on its analysis of the reports received from States Parties. Article 21(2) further requires that the Committee’s annual reports be transmitted to the Commission on the Status of Women. Lastly, and similarly to the ICESCR, Article 22 invites specialised agencies and UN entities to submit reports to the Committee concerning the implementation of the Convention in their respective area of competence, thus fostering the effective implementation of the CEDAW through enhanced international coordination.²⁰⁴

The CEDAW Optional Protocol

The Optional Protocol for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) was adopted by the General Assembly in 1999 and opened for signature and ratification in the same year. Article 1 requires States Party to both the Convention and the Optional Protocol to recognise the authority of the CEDAW Committee to receive and consider communications submitted by individuals under the jurisdiction of the State Party.²⁰⁵ At the same

²⁰¹ *Ibid.*, Art. 18(1)(a).

²⁰² *Ibid.*, Art. 18(1)(b).

²⁰³ M. A. Freeman, C. Chinkin, B. Rudolf, *The UN convention*, pp. 490-493.

²⁰⁴ CEDAW, Art. 19-22.

²⁰⁵ UN General Assembly, *Optional Protocol to the Convention on the Elimination of Discrimination against Women*, A/54/49 (Vol. I), 2000, Art. 1.

time, Article 2 supports the admissibility of communications submitted by or on behalf of an individual or a group who claiming to be victims of a violation, by any State Party, of any of the rights enshrined in the Convention.²⁰⁶ Unlike other international treaty bodies, the Optional Protocol to the CEDAW does not provide for a State-to-State complaints procedure. Nevertheless, the availability of a mechanism for individual complaints allows the Committee to operate independently from the States' periodic reporting system regulated under Article 18 of the Convention. Consequently, this enables the Committee to obtain a less State-centred and potentially more objective perspective on the actual condition of women within a State Party's territory as well as on the practical measures adopted to ensure the effective implementation of the Convention.

1.5.3 International Labour Organisation

Similarly to the UN treaty bodies, the ILO has also developed its own supervisory system that ensures that States Party concretely implement the Conventions they ratify. As enshrined in Article 22 of the ILO Convention, when ratifying any ILO Convention States Party also agree to submit annual reports to the International Labour Office in which the delineate the legal and practical measures they have adopted to implement the content of the specific Convention.²⁰⁷ This Article is therefore the foundation of the ILO's regular supervisory system which aims at providing general and periodic assessments of States' compliance and is composed of two interconnected Committees: the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the International Labour Conference's Tripartite Committee on the Application of Conventions and Recommendations (Committee of Conference).²⁰⁸ While the regular supervisory system remains the cornerstone of the ILO's monitoring framework, *ad hoc* or special procedures have gained increasing prominence. There are four such special procedures, designed to address allegations of non-compliance raised either by Member States concerning the conduct and possible violations of ILO Conventions by other Member States, or by the social partners within the ILO's tripartite structure, namely workers and employers' representatives.²⁰⁹

²⁰⁶ *Ibid.*, Art. 2.

²⁰⁷ ILO Constitution, Art. 22.

²⁰⁸ C. P. R. Romano, *The ILO System of Supervision and Compliance Control: A Review and Lessons for Multilateral Environmental Agreements*, IIASA Executive Report, IIASA, Laxenburg, Austria, 1996, p. VIII.

²⁰⁹ *Ibid.*, pp. 9-19.

The Committee of Experts on the Application of Conventions and Recommendations

The CEACR remains as one of the few exceptions to the ILO's tripartite structure.²¹⁰ Rather than being composed of representatives of governments, employers, and workers, it is currently made up of 20 eminent jurists, serving in their personal capacity and operating under the principle of independence. The members of the Committee are appointed by the ILO Governing Body upon proposal of the Director-General for a three-years term. Furthermore, they are selected from a variety of geographical regions and with regard to representation of different legal systems, and diversity in social, cultural, and religious backgrounds.²¹¹ As provided in paragraphs 5, 6 and 7 of Article 19 of the ILO Constitution, the Committee's primary function is to examine the periodic reports submitted by the Member States on the implementation of ratified ILO Conventions and Recommendations.²¹² Furthermore, States must also submit copies of these reports to employers and workers' organisations who can then directly comment on them or send their observations to the Committee.²¹³ On the basis of this examination, the Committee prepares reports that are subsequently submitted to the Committee of Conference.²¹⁴

When compiling their analysis, the CEACR can issue two types of comments: observations and direct requests. The former addresses more fundamental questions raised by States in their application of a particular Convention and are published in the Committee's annual report. The latter instead, consists of comments made on more technical questions or requests for further information made by States and are generally not published but communicated directly to the interested party.²¹⁵ In addition, these reports are generally published into two volumes. The first volume is itself divided into two parts: one containing the general report and the other focusing on observations concerning particular countries. The second volume comprises the general survey, which addresses a specific subject selected by the ILO Governing Body.²¹⁶ This in particular emerged from the recognition that effective supervision of labour standards requires comprehensive and reliable informations. To this end,

²¹⁰ H. Sevgi, "Historical Classification and Efficiency of the Supervisory System of International Labor Organization," *Innovare Journal of Social Sciences*, Vol 9, no. 2, 2021, p. 3.

²¹¹ International Labour Organisation, *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, International Labour Office, Geneva, 2019, para. 60.

²¹² ILO Constitution, Art. 19.

²¹³ ILO, Committee of Experts on the Application of Conventions and Recommendations (CEACR). Available at: <https://www.ilo.org/international-labour-standards/ilo-supervisory-system-regular-supervision/committee-experts-application-conventions-and-recommendations-ceacr>

²¹⁴ A. N. Chaib, "Committee of Experts on the Application of Conventions and Recommendations: International Labour Organization (ILO)," *Max Planck Encyclopaedia of International Law*, Oxford Public International Law, Oxford University Press, 2017, para. 3.

²¹⁵ H. Sevgi, "Historical Classification," p. 3.

²¹⁶ ILO, Committee of Experts on the Application of Conventions and Recommendations (CEACR).

Member States are required to respond to a detailed questionnaire addressing four principal sources of information: national legislations, juridical decisions, reports of activities of labour inspection services, and informations on the participation of employers and workers organisations. Thus, the purpose of the questionnaire is to assess whether the measures implemented by the Member State comply with the obligations established under the ratified ILO Conventions and the ILO Constitution.²¹⁷

The International Labour Conference's Tripartite Committee on the Application of Conventions and Recommendations

The International Labour Conference's Tripartite Committee on the Application of Conventions and Recommendations, also known as Committee on the Application of Standards (CAS),²¹⁸ is a permanent standing committee of the International Labour Conference and the other important pillar of the ILO's supervisory system.²¹⁹ Differently from the CEACR, it complies with the ILO tripartite structure and is therefore composed of employers, workers, and government's representatives who enjoy equal voting power.²²⁰ The Committee of Conference meets every year in June to review, in a tripartite setting, the observations made by the CEACR in its report and evaluate the measures employed by Member States to implement the provisions in the ratified Conventions.²²¹ In this context, the presence and active participation of nongovernmental bodies allows the Committee to gain a more direct and nuanced understanding of the practical challenges of implementation and the various political interests at stake than it would be possible in a body composed solely of independent experts.²²² Consequently, the Committee of Conference provides government's representatives with an opportunity to supplement the informations previously submitted to the Committee of Experts, to draw attention to any difficulties encountered in implementing and fulfilling their obligations under the Conventions and to seek guidance on how to overcome such challenges.²²³ As such, the outcome of the Conference is for the Committee to prepare and submit a new report to the International Labour Conference,²²⁴ containing solely the recommendations agreed upon by consensus among the three representative groups.²²⁵

²¹⁷ C. P. R. Romano, *The ILO System of Supervision*, pp. 5-6.

²¹⁸ A. N. Chaib, "Committee of Experts," para. 3.

²¹⁹ International Organisation of Employers, *Factsheet on the Committee on the Application of Standards (CAS)*, 2025, p. 2.

²²⁰ C. P. R. Romano, *The ILO System of Supervision*, p. 7.

²²¹ International Labour Organisation, *Handbook of procedures*, para. 64-66.

²²² C. P. R. Romano, *The ILO System of Supervision*, p. 7.

²²³ International Labour Organisation, *Handbook of procedures*, para. 66.

²²⁴ *Ibid.*, para. 65(ii).

²²⁵ International Organisation of Employers, *Factsheet*, p. 2.

Ad Hoc procedures

While the regular procedure, previously analysed, remains the ILO principal supervisory system, four *ad hoc* procedures have been adopted to deal with individual claims of adversarial nature raised by social partners or other Member States.²²⁶ Firstly, the Representation Procedure is defined under Article 24 of the ILO Constitution. This procedure allowed for any industrial association of employers or workers to make a representation in front of the International Labour Office against any Member State if they believed the State had “failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party.”²²⁷ Secondly, the Complaints Procedure, articulated in Articles 26 to 34 of the ILO Constitution, provides that a Member State may submit a complaint against another Member State on the grounds that the latter has failed to comply with the obligations arising from a ratified ILO Convention, provided that both States have ratified the Convention in question.²²⁸ The procedure can also be initiated by the Governing Body or by a delegate of the Conference on their own initiative.²²⁹ Following, the Freedom of Association Procedure was the first *ad hoc* procedure not provided for in the text of the ILO Constitution. It was instead established in 1950 by the ILO Governing Body following negotiations with the United Nations Economic and Social Council. Complaints under this procedure are examined by the ILO Committee on the Freedom of Association, a nine-member tripartite body tasked with investigating complaints of violation of the right to freedom of association.²³⁰ Lastly, the Discrimination in Employment procedure was established in 1973 to handle issues concerning equal treatment in the workplace. It enabled the Director-General to undertake studies on issues of discrimination in employment and, similarly to the Freedom of Association Procedure, was not limited to the ratification of specific ILO Convention but could instead be initiated towards any State member to the Organisation.²³¹

²²⁶ A. N. Chaib, “Committee of Experts,” para. 2 and C. P. R. Romano, *The ILO System of Supervision*, p. 10.

²²⁷ ILO Constitution, Art. 24.

²²⁸ International Labour Organisation, Complaint procedure (Art.26). Available at: <https://www.ilo.org/international-labour-standards/ilo-supervisory-system-special-procedures/complaint-procedure-art26>

²²⁹ C. P. R. Romano, *The ILO System of Supervision*, p. 11.

²³⁰ H. Sevgi, “Historical Classification,” p. 3 and C. P. R. Romano, *The ILO System of Supervision*, p. 16-18.

²³¹ C. P. R. Romano, *The ILO System of Supervision*, pp. 18-19.

2. The Evolution of Japanese National Law Concerning Gender Equality in the Workplace

2.1 Introduction

Japan has a long history concerning labour laws and employment protection legislations which predates World War II. It would therefore be incorrect to claim that Japan lacked such legislations before the war, even though its main labour laws were indeed adopted in the aftermath of the conflict.²³² In this context, contemporary Japanese labour law has been highly influenced and directly impacted by the American Occupation. As a matter of fact, these labour laws were originated from a transplantation of American and Western European legal models, albeit with several modification to adapt them to Japanese culture and society. This process was largely completed by the end of 1947 and laid the foundation for Japanese labour law.²³³

This international influence did not subside after the conflict, but instead Japan continued to face significant international pressure to align its own national legislations on discriminatory employment practices, with that of other industrialised nations. As such, and of more relevance to the scope of this thesis, an important role was played by the World Conference of the International Year of the Woman, held in Mexico City in 1975, which Japan attended. During this conference, a Plan of Action advised by the United Nation was adopted which inevitably influenced Japan to also develop its national legislation aimed at promoting women's empowerment and protection in employment. Consequently, several institutional bodies were established, including the Headquarters for the Planning and Promotion of Policies Relating to Women, the Office for Women's Affairs within the Prime Minister's Office, and the Advisory Council to the Prime Minister on Planning and Promotion of Women's Affairs.²³⁴ These developments led first to the ratification of the International Covenant on Economic, Social and Cultural Rights in 1979, and following to the signing of the Convention on the Elimination of All Forms of Discrimination against Women in 1980. Japan was however initially unable to ratify the CEDAW because "it had no legal guarantees of employment equality and plenty of empirical evidence of employment inequality."²³⁵ In other words, Japan's domestic legislations were not yet

²³² M. Riminucci, "L'introduzione del diritto del lavoro in Giappone," *Riflessioni sul Giappone antico e moderno III*, 2018, p. 177.

²³³ E. Harari, *The Politics of Labor Legislation in Japan*, University of California Press, 2023, pp. 51-53.

²³⁴ Y. Takao, "Japanese women in grassroots politics: building a gender-equal society from the bottom up," *The Pacific Review*, Vol. 20, No. 2, 2007, p. 156.

²³⁵ B. Molony, "Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender," *Signs*, The University of Chicago Press, Vol. 20, No. 2, 1995, p. 282.

sufficient to support the implementation of the provisions enshrined in the Convention. Thus, ratification only occurred in 1985, following the adoption of the Equal Employment Opportunity Law among other reforms of Japanese domestic law.²³⁶ This was later also followed by the ratification of the ILO Convention No. 156 on the protection of Workers with Family Responsibilities in 1995.

While international pressure to comply with standards set by ratified treaties did play an important role in shaping Japan's legal framework for equality in the workplace, domestic factors were equally significant. In particular, the declining birth rates and the rapid growth of elderly population prompted increased attention to gender roles, specifically the role of women both in the economy and in family care. As the proportion of elderly individuals increased in fact, fewer and fewer workers were left to sustain the national economy, leading to a growing reliance on women's labour. However, in a context where women were insufficiently protected or supported in balancing their roles as both workers and caregivers, the opportunity costs of marriage and childcare for women became extremely high. At the same time, the burden of managing a career alongside childcare and family responsibilities discouraged many women from having children all together, thus worsening the problem of declining birthrates.²³⁷ Consequently, the Japanese government was compelled to implement gender-related labour reforms that would enable female workers specifically to fulfil both their work and family responsibilities thus supporting both economic stability and demographic growth. In this sense, Japanese labour legislations can be understood as a product of a hybrid dynamic between international obligations and national socio-economic imperatives.

For these reasons, this chapter will begin with an overview of the Japanese legal framework developed in the aftermath of World War II. Section 2.2 examines the three foundational legal instruments that served as stepping stones for all further legislative developments towards the achievement of gender equality in the workplace: the Japanese Constitution of 1946, the Labour Standard Act and the Working Women's Welfare Act. Section 2.3 will then provide an in-depth analysis of the Equal Employment Opportunity Law as the cornerstone of Japanese gender equality laws in the field of employment. As such, this section will first outline the historical development of the law, then analyse its substantive provisions and subsequent amendments, and lastly examine its enforcement mechanisms. Following, Section 2.4 turns to key policies designed to promote work-life balance and to operate in conjunction with the EEOL, focusing in particular on the Child Care and Family Care Leave Law as well as the Gold Plan and the Angel Plan. Lastly, Section 2.5 analyses two

²³⁶ *Ibid.*

²³⁷ P. Boling, "Family Policy in Japan," *Journal of Social Policy*, Vol. 27, No. 2, 1998, pp. 173-175.

of the most recent legislative measures aimed at promoting women's participation in the workforce: the Women's Advancement Promotion Act and the Work Style Reform Bill.

2.2 Post World War II Legal Framework

2.2.1 The Japanese Constitution of 1946

The inception of the prohibition of gender discrimination in the workplace within the Japanese legislative context can be traced back to the first democratic Japanese constitution of 1946.²³⁸ Although the Japanese Constitution is not a law specifically focused on employment, it provides the fundamental legal framework for gender equality in Japan. Here in fact, Article 14(1) states that

All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.²³⁹

As such, this article establishes the principle that men and women should be treated equally in all spheres of life, including employment. This idea is then further reinforced in Article 27(1) which provides that "all people shall have the right and the obligation to work."²⁴⁰ Thus, when considered together, these two articles argue that, as men and women should be considered equals under the law in all aspects of life, women should have the same rights and obligations as men to participate in the work life. Therefore, these provisions constitute the foundation of what would be developed to become the minimum standard for gender equality in the workplace in Japanese labour legislations. Therefore, while the Japanese Constitution remains relatively general and open to interpretation in regards to the topic of gender equality specifically in the field of employment, it nonetheless serves as the source of constitutional legitimacy for all subsequent Japanese labour equality laws.

2.2.2 Labour Standard Act

The first Japanese general law regarding employment relationships was passed in 1947 with the name of Labour Standard Act (LSA)²⁴¹ and was adopted as part of a trio of legislations which also included the Labour Relations Adjustment Act of 1946 and the Labour Union Act of 1949.²⁴² The Labour Standard Act provided for regulations concerning gender equality, including the principle of

²³⁸ M. Riminucci, "L'introduzione del diritto del lavoro in Giappone," p. 182.

²³⁹ Prime Minister's Office of Japan, *The Constitution of Japan*, 1947, Art. 14(1). Available at: https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

²⁴⁰ *Ibid.*, Art. 27(1).

²⁴¹ J. Kumamoto-Healey, "Women in the Japanese labour market, 1947-2003: A brief survey," *International Labour Review*, Vol. 144, No. 4, 2005, p. 462.

²⁴² K. Rawstron, "Evaluating Women's Labour in 1990s Japan: The Changing Labour Standards Law," *New Voices*, Vol. 4, 2011, p. 59.

equal pay for equal work. Notably, this predated even the International Labour Office Convention No. 100 on Equal Remuneration of 1951, which Japan ratified in 1967. The Act also established other protective measures for women such as maternity, childcare and menstruation leave. As such, this legislation not only became the foundation of labour law in post-war Japan, but also the true beginning of legislative protection of gender equality in employment within the Japanese context.

The two main articles ensuring the principle of gender equality in the workplace are Article 3 and 4 of the LSA. The former, providing for the principle of equal treatment, claims that “an employer must not use a worker's nationality, creed, or social status as a basis for differential treatment with respect to wages, working hours, or other working conditions,”²⁴³ while the latter is more explicit in its protection of gender equality as it states that “an employer must not use the fact that a worker is a woman as a basis for differential treatment in comparison to men with respect to wages.”²⁴⁴ As such, these articles aim at protecting women’s rights to equality at least in outcome. Yet, employers often find ways to bypass these obligations in order to avoid having to pay women the same salary as men. As such, they often describe identical work content in different ways or name the same working position with different titles. In doing so, employers are able to impose on women non-regular contracts²⁴⁵ under different job titles which, despite requiring the same performance level and the execution of the same duties as that expected from men, allow employers to justify lower wages. This is because the job titles assigned to women are formally classified at a lower level than those held by their male colleagues. Consequently, Article 4 can realistically only be applied to workers with a lifetime employment contract, which however, due to its inherent requirements, is mostly only offered to men.²⁴⁶

The first iteration Labour Standard Act also contained other provisions specific to women’s protection commonly known as 女性保護規定 (*josei hogo kitei*), the Women’s Protection Provisions.²⁴⁷ Among these, Article 61 limited women’s overtime work to a maximum of 2 hours per day, or 6 hours per week, reaching a maximum total of 150 hours a year.²⁴⁸ Following, Article 62 prohibited women from working from 10 pm to 5 am,²⁴⁹ with the exception of specific occupations.²⁵⁰

²⁴³ Ministry of Health, Labour and Welfare, *Translation of the Labour Standard Act*, Act No. 49, 1947 in “Japanese Law Translations,” 2018, Art. 3. Available at: <https://www.japaneselawtranslation.go.jp/en/laws/view/3567/en>

²⁴⁴ *Ibid.*, Art. 4.

²⁴⁵ In this thesis, the term “non-regular” indicates fixed-term, part-time, or indirect forms of employment and contracts.

²⁴⁶ A. Marfording, “Gender Equality under the Japanese Constitution,” *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, Vol. 29, No. 3, 1996, pp. 336-337.

²⁴⁷ K. Rawstron, “Evaluating Women’s Labour in 1990s Japan,” p. 59.

²⁴⁸ Ministry of Health, Labour and Welfare, *Translation of the Labour Standard Act*, Art. 61.

²⁴⁹ *Ibid.*, Art. 62.

²⁵⁰ K. Rawstron, “Evaluating Women’s Labour in 1990s Japan,” footnote 8, p. 59.

Lastly, Article 63 prohibited women from performing hazardous tasks such as working underground, carrying out inspection, maintenance and lubrication of moving equipment, executing heavy manual labour and other similar activities.²⁵¹ On top of these, there were also provisions on the protection of maternity leave, child care and women's health still present in the most recent version of the Act. Thus, Article 65 guarantees up to fourteen weeks of maternity leave before the birth of the child and up to 8 weeks of leave postpartum whilst also allowing women to be transferred to lighter work operations if so requested.²⁵² Further, Article 66 requires employers to not force expectant or postpartum mothers to work overtime or at nighttime if requested.²⁵³ Lastly, Article 67 provides that women raising an infant born by less than an year can ask for up to at least 30 minutes of time twice a day to care for and nurse the infant.²⁵⁴

Whilst these provisions may appear extremely useful for women, they demonstrate the Labour Standard Act's major shortcomings in addressing gender discrimination outside wage considerations. Firstly, the LSA does not prohibit gender discrimination in all other areas of employment such as hiring and recruitment, promotion and work opportunity and contract termination.²⁵⁵ Secondly, the Women's Protection Provisions have since been proven controversial and have been often criticised as measures restricting women from achieving their full labour potential.²⁵⁶ Furthermore, they encouraged employers to develop discriminatory, yet legal, employment practices that favour male employees over their female colleagues, such as requiring female employees to retire upon marriage.²⁵⁷ Lastly, while the provisions on maternity leave and child care allow and support mothers in their ability to give birth to healthy children, they do not provide mothers with the time and resources to properly raise them.²⁵⁸ As such, while the LSA represents the earliest legislative commitment to gender equality in employment in Japan, it is far from being comprehensive or fully effective.

²⁵¹ Ministry of Health, Labour and Welfare, *Translation of the Labour Standard Act*, Art. 63.

²⁵² *Ibid.*, Art. 65.

²⁵³ *Ibid.*, Art. 66.

²⁵⁴ *Ibid.*, Art. 67.

²⁵⁵ M. Starich, "The 2006 Revisions to Japan's Equal Opportunity Employment Law: A Narrow Approach to a Pervasive Problem," *Washington International Law Journal*, Vol. 16, No. 2, 2007, p. 554.

²⁵⁶ K. Rawstron, "Evaluating Women's Labour in 1990s Japan," p. 59.

²⁵⁷ M. Starich, "The 2006 Revisions," p. 554.

²⁵⁸ B. Molony, "Japan's 1986 Equal Employment Opportunity Law," pp. 279-280.

Major revision

The first amendment to the Labour Standard Act occurred during the adoption of the Equal Employment Opportunity Law in the 1980s, at which point some of the LSA provisions on the restriction put on female workers were relaxed.²⁵⁹ However, the first major revision to this legislation took place in 1998, with the new version of the Labour Standard Act entering into force the following year.²⁶⁰ The main aim of this amendment was the removal of the controversial Women's Protection Provisions.²⁶¹ Among these, the "revision"²⁶² of the amount of overtime allowed to female workers led to an interim period during which the Minister of Labour "set more stringent standards of the upper limit on the amount of overtime work for female workers responsible for the care of children or senior citizens if they request shorter overtime work." Following, and similarly to the provisions enshrined in the Equal Employment Opportunity Law, changes were applied to disputes resolutions. As such, while in the previous LSA "both parties to a dispute over working conditions were required to be in agreement to call upon the arbitration services of the Labour Standards Inspection Offices,"²⁶³ under the revised version of the Labour Standard Act either party is allowed to initiate such proceedings, with further protection against retaliatory action guaranteed to the employees bringing a claim unilaterally.²⁶⁴

2.2.3 Working Women's Welfare Act

The Working Women's Welfare Act (WWWA) was passed by the Japanese Diet in 1972 and, together with the Labour Standard Act, it worked as the benchmark point of Japanese gender equality legislation specific to the field of employment. The Equal Employment Opportunity Act in fact, which is generally considered the cornerstone of Japan's gender equality legislation, is technically a revision of the WWWA. This is the reason why, in its first draft, what would come to be adopted in 1985 as the EEOL was named the Act on Promotion of the Welfare of Female Workers Including Ensuring Equal Opportunities and Treatment of Men and Women in Employment.²⁶⁵ In this context, the Working Women's Welfare Act had the aim to encourage women to enter the workforce whilst

²⁵⁹ K. Rawstron, "Evaluating Women's Labour in 1990s Japan," p. 59.

²⁶⁰ J. Kumamoto-Healey, "Women in the Japanese labour market," p. 462.

²⁶¹ K. Rawstron, "Evaluating Women's Labour in 1990s Japan," p. 59.

²⁶² The new amount of allowed overtime work for women was set to 150 hours annually which was the same amount as the old Labour Standard Law before the revision.

²⁶³ J. Kumamoto-Healey, "Women in the Japanese labour market," p. 462.

²⁶⁴ *Ibid.*

²⁶⁵ H. Nakakubo, "Gender Equality in the workplace from a legal perspective: current situation and issues of Japan's Equal Employment Opportunity Act", *Japan Labour Issues*, Vol. 6, no. 36, 2022, pp. 16-17.

supporting them in handling both work and family responsibilities.²⁶⁶ As such, and as will be analysed in Section 2.3.1, the WFWA required employers to not discriminate against female workers on the basis of sex²⁶⁷ whilst also providing women with maternity leave and vocational training.²⁶⁸ The Working Women's Welfare Act remained however as an inadequate equality measure as its provisions concerning equal opportunities and treatment between men and women were not made mandatory but instead remained as "duties to endeavour" to be adopted on a voluntary base by employers.²⁶⁹ Consequently, and as its name suggests, the Working Women's Welfare Act is generally regarded as a legislation aimed at promoting equality primarily through the welfare of women rather than as a measure protecting their inherent human rights to participate in economic activity as recognised under international law.²⁷⁰

2.3 Equal Employment Opportunity Law

2.3.1 Historical Development

The Equal Employment Opportunity Law was enacted in 1985 as a way to amend and execute the Act on Equal Opportunity and Treatment between Men and Women in Employment of 1972.²⁷¹ This implementation came six years after the adoption of the CEDAW by the United Nations²⁷² and was highly influenced by Japan's plan to ratify the Convention.²⁷³ As such, the EEOL constituted Japan's way of demonstrating its commitment to the provisions of gender equality, specifically in the field employment, enshrined in Article 11 of the Convention.²⁷⁴ Consequently, the objective of the EEOL was to "improve women's economic prospects by helping them to gain access to those jobs and career paths from which they were formerly excluded."²⁷⁵

To do so, the cycle of employment was divided into five macro areas each encompassing a distinct stage of the employment process from recruiting to dismissal. The EEOL was therefore designed to

²⁶⁶ R. Larsen, "Ryōsai Kenbo Revisited: The Future of Gender Equality in Japan after the 1997 Equal Employment Opportunity Law," *Hastings International & Comparative Law Review*, Vol. 24, No. 2, 2001, p. 200.

²⁶⁷ L. Parkinson, "Japan's Equal Employment Opportunity Law: An Alternative Approach to Social Change," *Columbia Law Review*, Vol. 89, No. 3, 1989, footnote 8.

²⁶⁸ R. Larsen, "Ryōsai Kenbo Revisited," p. 200.

²⁶⁹ R. Larsen, "Ryōsai Kenbo Revisited," p. 200 and H. Nakakubo, "Gender Equality in the workplace from a legal perspective," p. 17.

²⁷⁰ H. Nakakubo, "Gender Equality in the workplace from a legal perspective," p. 17.

²⁷¹ L. Parkinson, "Japan's Equal Employment Opportunity Law," p. 606.

²⁷² T. Hanami, F. Komiya and R. Yamakawa, *Labour Law in Japan*, para. 257.

²⁷³ "Treaty Bodies Database: Ratification Status for Japan," Office of the United Nations High Commissioner for Human Rights. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=87&Lang=EN

²⁷⁴ J. Kumamoto-Healey, "Women in the Japanese labour market," p. 463.

²⁷⁵ L. Edwards, "The Status of Women in Japan: Has the Equal Employment Opportunity Law Made a Difference?", *Journal of Asian Economics*, Vol. 5, No. 2, 1994, p. 218.

address gender-based discrimination at each of these stages. Accordingly, the five areas identified were:

1. Recruitment and hiring
2. Job assignment and promotion
3. Education and training
4. Employee benefits
5. Mandatory retirement age, retirement, and dismissal.²⁷⁶

However, the regulatory approach adopted in the EEOL was not uniform across all these categories. As such, while the first two areas were framed as recommendations, the last three were subject to explicit legal prohibitions.²⁷⁷ Therefore, Articles 7 and 8 argued that employers “should endeavour” to “give equal opportunities to men and women when recruiting and hiring workers” and “treat women workers on an equal footing with male workers when assigning posts or promoting workers.” On the contrary, Articles 9, 10 and 11 explicitly stated that “employers shall not discriminate against female workers on the basis of sex.”²⁷⁸

As Loraine Parkinson has observed, this dual regulatory approach reflected the political compromise on which the first enactment of the EEOL was based. On the one hand, Japan was increasingly pressured by the international community to reform its own national legislations in order to ratify the CEDAW at a time when, as Parkinson notes, “neither Japanese women nor Japanese men were entirely ready”²⁷⁹ for such transformative change. On the other hand, the Japanese government was fully aware that practical implementation of such changes would require adjustments to the deeply rooted Japanese social norms and employment practices. For this reason, it was decided that the enactment of the EEOL would be based on two main principles: voluntarism and gradualism.²⁸⁰ Consequently, and as previously analysed, provisions concerning women already in employment, such as those regarding training, fringe benefits and dismissals, were framed in prohibitory terms, while provisions aimed at ensuring equal treatment in access to and opportunities for promotion in employment were defined as 努力義務 (*doryoku gimu*), or “obligations to make a sincere effort.”²⁸¹ The lack of direct prohibition in these last provisions explains why, as argued by professor Hanami,

²⁷⁶ L. Parkinson, “Japan's Equal Employment Opportunity Law,” p. 606.

²⁷⁷ L. Edwards, “The Status of Women in Japan,” p. 218.

²⁷⁸ L. Parkinson, “Japan's Equal Employment Opportunity Law,” footnote 8, and L. Edwards, “The Status of Women in Japan,” p. 218.

²⁷⁹ L. Parkinson, “Japan's Equal Employment Opportunity Law,” p. 605.

²⁸⁰ *Ibid.*

²⁸¹ J. Kumamoto-Healey, “Women in the Japanese labour market,” p. 463.

the original 1985 version of the EEOL was regarded as “toothless” at best and a mere joke at worst,²⁸² and why, while still an important first step towards equality in employment for Japan, it was ultimately insufficient in achieving any *de facto* form of equality.²⁸³

Major amendments

To improve its content and practical efficiency, the Equal Employment Opportunity Law was subjected to two major amendments, the first in 1997 and the second in 2006. The first EEOL amendment, which came into force in 1999, was aimed at bringing a decisive shift to the content of the statute. As such, it notably replaced the previous “duty to endeavour” principle, present in the 1985 version of the Law, with binding prohibitions. Consequently, gender discrimination in the fields of recruitment, hiring, job assignments and promotion, which was previously only subject to voluntary compliance, became expressively prohibited.²⁸⁴ This legislative shift was also reflected in the change of title between the two versions of the law. The 1985 EEOL was in fact titled “Law respecting the improvement of the welfare of women workers, including the guarantee of equal opportunity and treatment between men and women in employment,” thus emphasising its protective, and arguably paternalistic, perspective. The title of 1997 revision instead, was “Law respecting the guarantee of equal opportunity and treatment between men and women in employment,” which underlined the shift towards a more explicitly equality-based framework of the law.²⁸⁵

The following 2006 amendment was then aimed at broadening the scope and applicability of the Equal Employment Opportunity Law. As such, it altered the one-sided nature of the law²⁸⁶ so that all measures of protection against sexual discrimination in employment, including indirect discrimination, would become applicable to both men and women.²⁸⁷ To this end, the Articles’ language was revised as to state that “the basic principles of this Act are to enable workers [労働者] to lead fulfilling professional lives, free from sexual discrimination, and in the case of female workers [女性労働者], with respect for motherhood,”²⁸⁸ while the 1997 version read, “the basic principle of

²⁸² T. Hanami, “Equal Employment Revisited,” *Japan Labour Bulletin*, Vol.39, No. 1, 2000, p. 9.

²⁸³ I. Mizushima, “Promoting Gender Equality in Japan: An Examination of Labor Law,” *Osaka University Law Review*, No. 64, 2017, p. 162.

²⁸⁴ J. Kumamoto-Healey, “Women in the Japanese labour market,” p. 451.

²⁸⁵ *Ibid.*, p. 463.

²⁸⁶ I. Mizushima, “Promoting Gender Equality in Japan,” p. 163.

²⁸⁷ T. Hanami, F. Komiya and R. Yamakawa, *Labour Law in Japan*, para. 257 and I. Mizushima, “Promoting Gender Equality in Japan,” p. 163.

²⁸⁸ Ministry of Health, Labour and Welfare, *Translation of The Act on Equal Opportunity and Treatment between Men and Women in Employment (EEOL)*, Act No. 113, 1972, in “Japanese Law Translations,” 2022, Art. 2.1. Available at: <https://www.japaneselawtranslation.go.jp/en/laws/view/4190/en>

this law is that *women workers* be enabled to engage in full working lives [...].”²⁸⁹ Thus, through the change from “women workers” to simply “workers,” policymakers were able demonstrate their intention to transform the EEOL from a protectionist law into a more comprehensive framework of gender equality.²⁹⁰

2.3.2 Substantive Provisions

Prohibition of Direct Gender Discrimination

As seen previously, it was with the 1997 amendment that provisions on the prohibition of direct gender discrimination in every area of employment were incorporated into the Equal Employment Opportunity Law. In the 1985 version of the EEOL in fact, explicit prohibitions of gender discrimination applied only to the areas of training, benefits, and dismissal, while equality in recruitment, hiring and promotion was framed as a mere “duty to endeavour.”²⁹¹ The amended version of 1997 sought to remedy this disparity and to establish a more comprehensive anti-discriminatory law. As a reflection, the purpose of the 1997 EEOL was also changed to ensure “equal opportunity and treatment between men and women in employment in accordance with the principles of the Constitution of Japan.”²⁹² Consequently, Article 5 now provides that “with regard to the recruitment and employment of workers, employers must provide equal opportunities for all persons regardless of their sex.”²⁹³ The use of the term “must” demonstrates the new mandatory nature of the provision a marks the departure from the previous formulation requiring employers to merely “endeavour” in the achievement of gender equality. At the same time, Article 6 prohibits discrimination on the basis of sex in the fields of assignments, promotion, demotion, and training of workers, fringe benefits, changes in job title and employment status and lastly encouragement of retirement, dismissal, and renewal of labour contracts.²⁹⁴ Thus, through the 1997 revision the EEOL was reformulated to strengthen its doctrinal force in regards to direct gender discrimination in employment.

Indirect Discrimination

The 2006 amendment to the EEOL had two main purposes. If on one side the law was changed to become more gender neutral and therefore allowing men to enjoy the same protective rights against

²⁸⁹ M. Starich, “The 2006 Revisions,” footnote n. 76, p. 562.

²⁹⁰ *Ibid.*, p. 562.

²⁹¹ J. Kumamoto-Healey, “Women in the Japanese labour market,” p. 464.

²⁹² EEOL, Art. 1.

²⁹³ *Ibid.*, Art. 5.

²⁹⁴ *Ibid.*, Art. 6.

sexual discrimination in employment as women, on the other, it was aimed at introducing the concept of indirect discrimination in employment.²⁹⁵ As such, Article 7 explains indirect gender discrimination in employment as the act of taking measures “with a prerequisite concerning conditions other than the person's sex, that may cause considerably disadvantageous treatment against members of a particular sex in comparison to members of the other sex, in cases where there is no legitimate reason to take such measures.”²⁹⁶ In other words, indirect discrimination was understood to arise when a formally neutral requirement or practice, which did not explicitly differentiate between the genders, would place one group at substantial disadvantage with no objectively justified reason as to why. This understanding was however limited to three specific cases of indirect gender discrimination presented by the Ministry of Health, Labour, and Welfare in one of its ordinances:²⁹⁷

1. Basing recruitment or employment of workers on physical criteria such as height, weight and physical strength,
2. Basing recruitment, employment, promotion or change in job type of workers on their ability to accept a transfer anywhere in Japan,
3. Basing a promotion opportunity on the candidate's previous transfer to other workplaces.²⁹⁸

While employers often justified such practices as indicators of the employee's loyalty and commitment towards the company, ultimately, these actions would have discriminatory effects towards those individuals, particularly women, unable to satisfy them due to external circumstances such as family responsibilities in raising children or taking care of the elderly. Therefore, the 2006 EEOL attempted to stop employers that tried to circumnavigate the prohibition of gender discrimination in employment by using legitimate, albeit ultimately false, pretences.²⁹⁹

Sexual Harassment Regulation

Similarly to the case of direct discrimination, sexual harassment was also recognised as a form of gender discrimination in the 1997 amendment of the EEOL. As such, positive action was required of employers as to prevent sexual harassment in the workplace.³⁰⁰ Then, with the 2006 revision, new

²⁹⁵ T. Hanami, F. Komiya and R. Yamakawa, *Labour Law in Japan*, para. 257.

²⁹⁶ Ministry of Health, Labour and Welfare of Japan, *Outline of the Equal Employment Opportunity Act*, 2019, para. 2.

²⁹⁷ M. Starich, “The 2006 Revisions,” p. 562.

²⁹⁸ Ministry of Health, Labour and Welfare of Japan, *Outline of the Equal Employment Opportunity Act*, para. 2 and M. Starich, “The 2006 Revisions,” p. 563.

²⁹⁹ M. Starich, “The 2006 Revisions,” p. 563.

³⁰⁰ *Ibid.*, p. 559.

measures against sexual harassment in the workplace were further enforced.³⁰¹ Consequently, Article 11 states that

Employers must take necessary measures for employment management, such as developing a necessary system for providing consultations to workers and appropriately handling the matters, so that the workers they employ do not suffer any disadvantageous working conditions on the grounds of that workers' response to sexual harassment in the workplace, nor suffer any damage to the work environment due to sexual harassment.³⁰²

Thus, in this article, positive action is posed not only as a duty to prevent, but also as the duty to protect those speaking up against the sexual harassment they have or are experiencing. This fact is further reinforced in paragraph 2 which states that “employers must not dismiss workers or treat them disadvantageously on the grounds of seeking consultations referred to in the preceding paragraph or giving facts in cooperating with consultations provided by employers.”³⁰³ In this way, the EEOL established a compliance-based framework able to handle both prevention and possible retaliatory measures.

Pregnancy and Maternity Disadvantage (Matahara)

Similarly to the broader case of sexual harassment in the workplace previously discussed, protective measures against disadvantageous treatment for reason of marriage, pregnancy and maternity, were also firstly introduced in the 1997 revision of the EEOL and then further expanded upon in its 2006 amendment.³⁰⁴ Specifically, Article 9 prohibits employers from treating female workers “disadvantageously”³⁰⁵ or terminating their employment on the grounds of marriage, pregnancy, or childbirth.³⁰⁶ Moreover, any termination during pregnancy or within a year after giving birth was also to be considered invalid and therefore nullified.³⁰⁷ Consequently, in order to prevent situations of pregnancy and maternity discrimination, commonly referred to in Japanese as マタハラ (matahara), employers were also required take all

Necessary measures for employment management, such as developing a necessary system for providing consultations to female workers and appropriately handling the matters to prevent their work environment from being damaged on the grounds of pregnancy or childbirth, for requesting

³⁰¹ *Ibid.*, p. 561.

³⁰² EEOL, Art. 11(1).

³⁰³ *Ibid.*, Art. 11(2).

³⁰⁴ M. Starich, “The 2006 Revisions,” p. 564.

³⁰⁵ EEOL, Art. 9(3).

³⁰⁶ *Ibid.*, Art. 9(1).

³⁰⁷ *Ibid.*, Art. 9(4).

temporary absence from work [...], for having taken absence from work [...], or by any other reasons related to pregnancy or childbirth [...].³⁰⁸

As such, these provisions aimed at protecting pregnancy and maternity from adverse and disadvantageous employment consequences.

2.3.3 Enforcement Structure

In regards to the administrative enforcement of such provisions, the Equal Employment Opportunity Law regulates its dispute resolution mechanisms in Article 15 through 24. As such, the EEOL provides that “employers must endeavour to promote voluntary resolution by actions such as referring complaints to the complaints department”³⁰⁹ when a worker submits a complaint in regards to receiving discriminatory treatment. In this context, the director of the Prefectural Labour Bureaus (PLB) is also empowered to give guidance or advice, when requested by either or both parties, and make any necessary recommendation to the relevant party as to how best resolve the dispute.³¹⁰ Article 18 further states that, in case either or both parties apply for mediation rather than voluntary resolution, the Director of the PLB is allowed to refer their case to the Equal Opportunity Mediation Commission (Commission).³¹¹ The Commission is then empowered to listen to any witness to the dispute,³¹² prepare a conciliation proposal and recommend its acceptance to the parties concerned.³¹³ In case the Commission were to find no prospect of resolving the dispute through conciliation, it is allowed to discontinue the case after informing the involved parties.³¹⁴ Lastly, after the announcement of the discontinuation of their case, the parties who applied for conciliation can file a lawsuit as to explain the purpose of the conciliation within 30 days from the day of the discontinuation’s notification.³¹⁵ Thus, overall, the EEOL works more as a guideline for employers, emphasising conciliation and voluntary compliance, rather than a proper punitive law, requesting punitive action in case of violation of any of its provisions.³¹⁶

Prior to its second amendment in 2006, this approach was particularly evident in the EEOL reliance on reputational incentives as a form of enforcement. As such, companies encouraging the

³⁰⁸ *Ibid.*, Art. 11(3)(1).

³⁰⁹ EEOL, Art. 15.

³¹⁰ *Ibid.*, Art. 17.

³¹¹ *Ibid.*, Art. 18.

³¹² *Ibid.*, Art. 20.

³¹³ *Ibid.*, Art. 22.

³¹⁴ *Ibid.*, Art. 23.

³¹⁵ *Ibid.*, Art. 24.

³¹⁶ S. Assmann, “Gender Equality in Japan: The Equal Employment Opportunity Law Revisited 日本における男女平等 雇用機会均等法再考,” *The Asia-Pacific Journal*, Vol. 12, Issue 45, No. 2, 2014, p. 7.

recruitment and promotion of women were publicly praised by organisations such as the Women's Data Yearbook, which would list all corporations implementing positive action towards the elimination of gender discrimination in their offices.³¹⁷ At the same time, Articles 25(1) and 26 of the 1997 EEOL allowed the Minister of Health, Labour, and Welfare (MHLW) to make public whether a company was failing to comply with the anti-discriminatory measures enshrined in the law.³¹⁸ As argued by Stephanie Assmann, while this strategy may not seem effective from a Western point of view, in Japan, where tradition teaches the importance of maintaining “public face” and rely on “administrative guidance,” “adverse publicity might be just as effective as a legal penalty.”³¹⁹ Nevertheless, while enforcement strategies have evolved since 2006,³²⁰ the absence of legal penalties even in the presence of non-compliance persists and it continues to be a major problem in the effective implementation of the law.³²¹

2.4 Work-life Balance and Family Policies

2.4.1 Child Care and Family Care Leave Law

The Child Care Leave Law

While the Equal Employment Opportunity Law supported the advancement of gender equality in the workplace by prohibiting discrimination and harassment based on gender, workers, and particularly women, still faced the challenges of reconciling work and family life largely on their own. The Japanese legal framework in fact, did not yet provide specific measures addressing child-rearing or family care responsibilities outside of maternity leave. Within the traditional structure of Japanese families, it was not unusual for adult children to continue living with their parents even after marriage and in such cohabiting households, daughters-in-law were typically expected to assume primary responsibility in the care of their children, spouses, and parents-in-law. The impact of this arrangement on women's employment often depended on the health status of the parents-in-law. If they were healthy enough to assist with childcare, their presence could have a positive effect as it allowed women to return to the workforce. On the other hand, when the parents-in-law were elderly or in poor health and required constant care, the situation could have the opposite effect. In such cases in fact, women who had been previously able to work thanks to the cohabitation with their parents-

³¹⁷ *Ibid.*

³¹⁸ J. Kumamoto-Healey, “Women in the Japanese labour market,” p. 464.

³¹⁹ S. Assmann, “Gender Equality in Japan,” p. 7.

³²⁰ M. Starich, “The 2006 Revisions,” p. 570.

³²¹ S. Assmann, “Gender Equality in Japan,” p. 7.

in-law were often compelled to quit their jobs in order to provide care for them as well as for their children.³²²

Thus, in an effort to further support women's participation in the workforce, the Child Care Leave Law (CCLL) was implemented in 1991 with the aim to help employees balance their work life and family responsibilities.³²³ Initially, however, the CCLL granted full-time workers only the right to take leave to care for a child under the age of one, a provision which also extended to adopted children. Notably, the legislation employed gender neutral language, meaning that the right to request childcare leave was formally available to both mothers and fathers.³²⁴ As a result, mothers were no longer considered the only member of the household responsible for child-rearing activities. With regards to employers instead, Article 6(1) stipulated that they could not refuse employees' requests for childcare leave,³²⁵ but the legislation did not require employers to provide salary payments during the leave period, nor it imposed penalties for their noncompliance.³²⁶ This limitation was then partially addressed by the 1994 amendment to the Employment Insurance Law. Article 61-5 in fact, provided that "20 percent of the worker's regular monthly wages earned before taking leave [would be] paid as a Child Care Leave Basic Allowance and 5 percent as a Returning Job Allowance from the employment insurance."³²⁷ Nevertheless, the law failed to address the childcare needs of employees with older children, to reassure those employees that they would be able to resume the same role they had before the leave and to take into consideration part-time workers to whom the law did not extend.³²⁸ Thus, these problems highlighted the need for further reforms that could appropriately eliminate the gendered division of the workplace, characterised by male careerist and female part-timers bearing all family responsibilities,³²⁹ and instead support all workers in exercising both their rights and duties in relation to family care.

³²² S. Ikeda, "Family Care Leave and Job Quitting Due to Caregiving: Focus on the Need for Long-Term Leave," *The Japan Institute for Labour Policy and Training*, Vol. 14, No. 1, 2017, p. 28.

³²³ T. Araki, "Recent Legislative Developments in Equal Employment and Harmonization of Work and Family Life in Japan," *Japan Labour Bulletin*, Vol. 37, No. 4, 1998, p. 7.

³²⁴ B. Molony, "Japan's 1986 Equal Employment Opportunity Law," p. 280.

³²⁵ Ministry of Health, Labour and Welfare, *Translation of The Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members*, Act No. 76 of May 15, 1991, in "Japanese Law Translations," 2020, Art. 6(1), (CCFCLL). Available at: <https://www.japaneselawtranslation.go.jp/en/laws/view/3543/en>

³²⁶ B. Molony, "Japan's 1986 Equal Employment Opportunity Law," p. 280.

³²⁷ T. Araki, "Recent Legislative Developments," p. 14.

³²⁸ N. Suzuki, "History and Forthcoming Challenges of Family Care Leave Related Systems in Japan," *Senshu Social Well-being Review*, No. 3, 2016, p. 166.

³²⁹ B. Molony, "Japan's 1986 Equal Employment Opportunity Law," p. 281.

In 1995 the former Child Care Leave Law was amended and renamed as the Child Care and Family Care Leave Law. As the new name suggests, the main focus of this amendment was to expand the content of the Child Care Leave Law to include family care leave.³³⁰ It also sought to align the legislation with the standards established following Japan's ratification of ILO Convention No. 156, which protects workers with family responsibilities. Thus, according to Articles 2(2), 2(3) and 15, the caregiver leave was defined as a "leave that a worker takes [...] in order to provide nursing care to a Subject Family Member"³³¹ in a "condition requiring constant nursing care [...] due to injury, sickness, or physical or mental disability"³³² and that could extend to up to three months (90 days).³³³ Further, the scope of "family member" was broadened to include "a spouse [...] parents, children [...] or parents of a spouse."³³⁴ Furthermore, this amendment came to be adopted in conjunction with the 1997 revision of the Equal Employment Opportunity Law which abolished the prohibition of night work for workers with family responsibilities. This change however raised concerns that such workers might no longer be able to adequately care for their children or other family members.³³⁵ In response, Article 16 of the Child Care and Family Care Leave Law provided employees the right to request exemption from night work, which was defined as work performed between 5am and 10pm, if they had a child not yet in elementary school and if they so requested.³³⁶

Despite this amendment, some of the issues already present in the Child Care Leave Law were still carried over into the 1995 Child Care and Family Care Leave Law. First and foremost, the new law still did not provide any social security benefits or exemptions for workers taking either childcare or family care leave. While the 1994 amendment to the Employment Insurance Law (EIL) guaranteed workers taking childcare leave to receive at least a portion of their salary, this right was not directly incorporated into the CCFCLL, and the EIL provision did not extend to family care leave. In addition to this, under the CCFCLL there was still no requirement for employers to make any payment to employees taking this type of leave. Similarly, while workers taking childcare leave could request for their health insurance and pension contribution to be waived during the leave period, this same benefit

³³⁰ J. Kumamoto-Healey, "Women in the Japanese labour market," p. 465.

³³¹ CCFCLL, Art. 2(2).

³³² CCFCLL, Art. 2(3).

³³³ T. Araki, "Recent Legislative Developments," p. 15.

³³⁴ CCFCLL, Art. 2(4).

³³⁵ T. Araki, "Recent Legislative Developments," p. 15.

³³⁶ In the 1995 revision of the CCFCLL this right was enshrined in Article 16 as stated in T. Araki, "Recent Legislative Developments," p. 15. In the most recent version of the CCFCLL, this right has been moved to Article 19 as stated in Ministry of Health, Labour and Welfare, *Translation of The Act on Childcare Leave*, Art. 19.

could not be applied to those taking family care leave.³³⁷ Lastly, under both the CCLL and the CCFCLL, temporary and day-to-day workers were excluded from these provisions, regardless of whether they had child or family care responsibilities.³³⁸ As such, although these laws were intended to help all workers reconcile their work and family responsibilities, women, who in Japan have always constituted the majority of part-time employees,³³⁹ were effectively excluded from the very protections that would have allowed them to fulfil culturally expected caregiving roles³⁴⁰ while remaining in employment.

Following major revisions

After 1995, the Child Care and Family Care Leave Law underwent several further amendments. In the 2004 revision, temporary workers were given access to family care leave provided that

1. The worker had been continuously employed by the same employer for at least one year
2. The worker employment period was expected to continue after the 93rd day from the beginning of the leave
3. It was not evident that the worker's employment contract would expire and not be renewed in the year following the end of the 93-days leave period

As a result, the amended CCFCLL became applicable to almost all workers with the exception of those employed on a day-to-day base.³⁴¹

Following, the 2009 revision introduced additional measures aimed at facilitating the reconciliation of work and family obligations. As such, employers were required to reduce working hours and exempt from overtime work all employees responsible for the care of a child below the age of 3 years old.³⁴² This revision also introduced a system of short-term unpaid leave, operating alongside the longer-term family care leave of 93 days. Under this provision, workers were entitled to five days of leave per year, which could become ten days if the worker had multiple family members requiring nursing care.³⁴³ Lastly, and in order to ensure the complete viability of this new system, new enforcement mechanisms, similar to those prescribed in the EEOL, were established. As such, in cases where a dispute concerning family care leave arose between employer and employee, the first step was expected to be an autonomous resolution between the parties. If such effort failed,

³³⁷ J. Kumamoto-Healey, "Women in the Japanese labour market," p. 465.

³³⁸ N. Suzuki, "History and Forthcoming Challenges," p. 166.

³³⁹ J. Kumamoto-Healey, "Women in the Japanese labour market," p. 459.

³⁴⁰ S. Ikeda, "Family Care Leave and Job Quitting," p. 28.

³⁴¹ N. Suzuki, "History and Forthcoming Challenges," p. 166.

³⁴² *Ibid.*, p. 169.

³⁴³ *Ibid.*, p. 170.

a reconciliation committee could intervene by offering guidance or recommendations. Furthermore, punitive measures were introduced for companies that violated the CCFCLL including a system which would publicise the name of companies that failed to comply with the law's recommendations.³⁴⁴

Then, in 2016, the Abe administration began promoting the “zero people leaving their jobs to care for family members” campaign as part of its efforts to address and contrast labour shortages. As such, the CCFCLL was once again amended in order to strengthen policies supporting the balance between work and family obligations and create a healthier work environment.³⁴⁵ As part of these reforms, the conditions under which temporary workers could access family care leave were further relaxed. Thus, compared to the 2004 amendment, the second requirement was completely abolished, while the third was changed to make unclear whether a worker whose contract would expire within six months by the end of the 93 days leave could be eligible.³⁴⁶ Furthermore, this revision introduced the exemption from overtime work for workers with family care responsibilities, which was previously only recognised in the childcare system.³⁴⁷ It also introduced provisions aimed at preventing harassment related to childcare and family care related matters.³⁴⁸ As such, although certain issues remained, for instance the absence of any obligations for employers to pay wages during family care leave,³⁴⁹ these revisions significantly strengthened the legislation and, similarly to the Equal Employment Opportunity Law, established the minimum standards within Japanese labour law.³⁵⁰

2.4.2 The Angel and Gold Plans

At the same time as the adoption of the Child Care Leave Law and the subsequent Child Care and Family Care Leave Law, the Japanese Ministry of Health, Labour and Welfare introduced two social policies in the second half of the 1990s: the Angel Plan and the Gold Plan. Their aim was to help promote a better balance between work and family responsibilities, particularly in areas not fully addressed by existing legislations. Therefore, these initiatives were designed to address specific social challenges such as the declining birth rate and the increasing strain of caregiving in an aging society. Central to both was the recognition that women disproportionately bore the burden of both employment and family care, often forcing them to leave the workforce. Thus, these policies primarily

³⁴⁴ *Ibid.*, p. 171.

³⁴⁵ *Ibid.*, p. 177-178.

³⁴⁶ *Ibid.*, p. 166.

³⁴⁷ *Ibid.*, p. 169.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*, p. 172.

³⁵⁰ *Ibid.*, p. 177.

aimed at supporting women in balancing their professional and caregiving roles, therefore encouraging their continued participation in the employment.³⁵¹

The Angel Plan

The Angel Plan was launched by the Ministry of Health and Welfare, with the assistance of the Ministries of Labour, Construction and Education, in 1994 as an emergency five-year plan to respond to the problem of the low birth rate³⁵² by supporting workers with child rearing responsibilities.³⁵³ As such, its core measures focused on the expansion and improvement of childcare facilities and daycare services, increasing both their quantity and capacity.³⁵⁴ By expanding access to such services, the Plan sought to enable mothers to remain in employment while entrusting their children's care and development to trusted structures.

In parallel, the Ministry of Labour (MOL) introduced policies to improve working conditions for employees with caregiving responsibilities. These measures were aimed at

1. Creating an environment conducive to employees' taking childcare leave or eldercare leave, including making their re-entry to work smooth
2. Creating a work environment that makes it easy to working while caring for a dependent relative
3. Providing support for re-employment to those who quit their jobs because of childcare or eldercare responsibilities.³⁵⁵

To this end, the Ministry of Labour offered grants to companies for retraining employees returning from family care leave and to help cover the costs of home-care assistance. Moreover, it organised seminars to support workers, and especially mothers, in managing childcare responsibilities while continuing their career development.³⁵⁶

At the same time, the Ministry of Education introduced a policy aimed specifically at encouraging fathers' involvement in childcare and child rearing activities named "Support Project for Fathers to Participate in Home Education." Although implemented in some areas of Japan, its impact and practicability were limited by the structural rigidity of the Japanese work environment. Most noticeable, the long working hours and the constant demand for overtime work made it difficult for fathers, often employed under a lifetime contract, to devote more time to their family life. In this

³⁵¹ P. Boling, "Family Policy in Japan," pp. 173-175.

³⁵² G. S. Roberts, "Pinning Hopes on Angels: Governmental Responses to Japan's Low Birth Rate," *Social Science Japan Journal*, 1997, p. 19.

³⁵³ P. Boling, "Family Policy in Japan," p. 177.

³⁵⁴ G. S. Roberts, "Pinning Hopes on Angels," p. 19.

³⁵⁵ *Ibid.*, p. 20-21.

³⁵⁶ *Ibid.*

respect, the measures promoted by the Ministry of Labour proved more practicable in the short term as they primarily targeted women who were already socially expected to reconcile work and family responsibilities.³⁵⁷

The Plan was originally intended to be expanded by 1999 in order to further increase the number and capacity of childcare services. However, as early as 1996 it was already struggling to meet its designated targets. This underperformance was largely due to budget constraints and a lack of financial commitment by local governments. Many of them in fact, were reluctant to allocate the necessary funds to childcare services, particularly in a context where a significant portion of social welfare expenditure was already directed towards programs for the elderly.³⁵⁸ As a result, the scope of the Plan was rapidly and substantially scaled back, with a growing reliance on the private sector rather than on initiatives led by local authorities.³⁵⁹ Yet, the Angel Plan was not abandoned and was instead revised and extended through following policy adjustments in 1999, with the New Angel Plan, and in 2009, with the Plus One Policy.³⁶⁰ These revisions sought to address earlier shortcoming by creating an even more flexible work environment for workers with children, improving the educational environment of childcare facilities whilst reducing their costs and promoting the importance of local communities.³⁶¹ Nevertheless, the overall impact of these measures remained limited. While they contributed to a gradual increase in the availability of childcare and helped in a small increase in the Japanese total birth rate, they failed in stabilising women's participation in the workforce.³⁶² As such, despite the various reforms, that Angel Plan has fallen short of achieving its core objectives of reconciling childcare support with women's continued participation in the workforce.

The Gold Plan

The Gold Plan was announced in 1989, and implemented the following year, as a ten-year strategy to “promote home care for the elderly by expanding social services such as home helpers and respite care facilities.”³⁶³ Through this initiative, the Ministry of Health and Welfare in collaboration with the Ministry of Treasure and local governments, sought to respond to the rapid growth of the Japanese elderly population by expanding nursing care infrastructures. As such, between 1995 and 1999 the

³⁵⁷ *Ibid.*, p. 21.

³⁵⁸ “Tackling the Declining Birth Rate in Japan,” *Centre for Public Impact*, 2017, p. 7. Available at: <https://centreforpublicimpact.org/public-impact-fundamentals/tackling-the-declining-birth-rate-in-japan/>

³⁵⁹ P. Boling, “Family Policy in Japan,” p. 177.

³⁶⁰ “Tackling the Declining Birth Rate in Japan,” p. 1.

³⁶¹ *Ibid.*, p. 9.

³⁶² *Ibid.*, p. 5.

³⁶³ P. Boling, “Family Policy in Japan,” p. 178.

Plan established specific numerical targets aimed at increasing both the number of home helpers and of nursing daycare facilities' residents as well as the capacity of such establishments. Thus, the overarching objective was to move away from a solely hospital-based care and promote an in-home nursing system that would allow elderly individuals to remain in their own houses, while simultaneously alleviating the burden on families through greater availability of professional care services.³⁶⁴ However, similarly to the Angel Plan, local governments were reluctant to raise taxes to adequately finance such measures, situation that drew considerable public criticism and ultimately limited the Plan's effectiveness.³⁶⁵

The public criticism of the Gold Plan was mainly directed towards three key issues. Firstly, in anticipation of increased demand for care services, local governments tightened the means test criteria in an effort to limit the demand. However, this resulted in the exclusion of a significant portion of elderly individuals who were relying on the public care system. Secondly, despite the increase in number of nursing daycare facilities and availability of home helpers, the overall provision of services remained insufficient to meet the demand of all those in need. This, combined with the restricted eligibility criteria, meant that access to these care services was limited to only those elderly individuals deemed to be most in need, such as elderly with low income living alone or without family support.³⁶⁶

Lastly, and most relevant for the scope of this thesis, substantial criticism was raised by women and feminist activists. Under the "duty of care" framework often reinforced by Japanese Family Courts decisions, the responsibility of caring for elderly relatives typically fell on the daughters-in-law, who were most commonly the wives of the eldest son.³⁶⁷ This gendered expectation was then reflected in labour patterns. As such, the 1997 Employment Status Survey reported that, in 1995, approximately 90000 women left their place of employment to care for elderly family members while many others attempted to balance their work and caregiving.³⁶⁸ In addition, the annual reports from the Ministry of Health, Labour and Welfare for the years of 1998, 1999 and 2000, indicated that, despite the Gold Plan, around 85 percent of elderly individuals in 1996 were still being cared for at

³⁶⁴ Y. Matsushima, "National Policy for Families and the Elderly: Evolving from Family Care to Public Support," 獨協法学, Vol. 47, 1998, p. 12.

³⁶⁵ P. Boling, "Family Policy in Japan," pp. 178-179.

³⁶⁶ I. Peng, "Social care in crisis: Gender, demography, and welfare state restructuring in Japan," *Social Politics: International Studies in Gender, State & Society*, Vol. 9, No. 3, 2002, pp. 428-430.

³⁶⁷ Y. Matsushima, "National Policy for Families and the Elderly," p. 15.

³⁶⁸ Statistics Bureau, Management and Coordination Agency, "1997 Employment Status Survey," 1997. Available at: <https://www.stat.go.jp/english/data/shugyou/1.html> and I. Peng, "Social care in crisis," p. 430.

home by female relatives.³⁶⁹ Thus, as argued by Professor Patricia Boling, the bulk of elderly care continued to rely on so called “hidden assets,” namely the unpaid care work performed almost exclusively by women. As a result, many continued to be compelled to leave paid employment despite the presence of policies intended to support the opposite.³⁷⁰ In this sense the Gold Plan failed to substantially redistribute caregiving responsibilities leaving the preexisting gender inequalities largely intact.

2.5 Recent Developments

2.5.1 Women’s Advancement Promotion Act

The Act on the Promotion of Women’s Participation and Advancement in the Workplace, commonly known as the Women’s Advancement Promotion Act, was a legislation adopted in 2016 under the Abe administration.³⁷¹ Designed as time-limited measure set to expire in March 2026,³⁷² it aimed at finalising Japan’s legal framework for gender equality in employment.³⁷³ As stated in Article 1, the law sought to

Swiftly and thoroughly encourage women who choose to or intend to work, to fully demonstrate their qualities and capabilities and engage in professional life actively [...] leading to a vibrant and dynamic society in which the rights of both men and women are respected.³⁷⁴

More generally, the legislation was introduced in response to significant economic and social challenges, including the previously discussed rapid decline in birthrates and the aging of the population, both of which have amplified the urgency of increasing women’s participation in the workforce.

As such, the Women’s Advancement Promotion Act is based on three fundamental principles enunciated in Article 2. Firstly, the promotion of women's participation in the workforce has to take into account existing gender disparities concerning the engagement with professional life. This

³⁶⁹ Ministry of Health, Labour and Welfare, “Annual Health, Labour and Welfare Report 1998-1999.” Available at: <https://www.mhlw.go.jp/english/wp/index.html> and I. Peng, “Social care in crisis,” p. 430.

³⁷⁰ P. Boling, “Family Policy in Japan,” pp. 178-179.

³⁷¹ A. Iida, “Gender inequality in Japan: The status of women, and their promotion in the workplace,” *Corvinus Journal of International Affairs*, Vol. 3, No. 3, 2018, p. 44.

³⁷² Y. Abe, M. Morita, and R. Shimada, “Working Conditions for Women and Gig Workers in Japan”, *Employment & Labour Law 2025*, International Comparative Legal Guides, 2025, p. 1.

³⁷³ H. Nakakubo, “Gender Equality in the workplace from a legal perspective: current situation and issues of Japan’s Equal Employment Opportunity Act”, *Japan Labour Issues*, Vol. 6, no. 36, 2022, p. 16.

³⁷⁴ Ministry of Health, Labour and Welfare, *Translation of The Act on the Promotion of Women's Active Engagement in Professional Life* (WAPA), Act No. 64, 2015, in “Japanese Law Translations,” 2022, Art. 1. Available at: <https://www.japaneselawtranslation.go.jp/en/laws/view/4163>

includes creating further opportunities for employment, education, training, promotions, occupational diversity and job mobility, whilst also addressing structural barriers such as workplace practices rooted in stereotypical gender roles that could hinder women's full participation.³⁷⁵ Secondly, while recognising that women's careers are often interrupted due to life events like marriage, pregnancy, childbirth, childcare and family care, the Act emphasises the need to support a continuous balance between professional and family life. As such, it calls for the creation of a work environment in which both men and women can reconcile their work and family responsibilities through mutual cooperation within the household and with social support.³⁷⁶ Lastly, the Act highlights the importance of respecting women's individual preferences regarding the balance between their professional and personal lives when promoting their active engagement in the employment.³⁷⁷

Responsibilities of national and local governments

In this context, the national government and local authorities are expected to formulate and implement all necessary measures for the promotion of women's active engagement in professional life. Thus, in compliance with the three fundamental principles, the government has to establish a "Basic Policy" to ensure the comprehensive implementation of such measures. This Basic Policy aims at outlining the general course of action for promoting women's participation in employment as well as delineating some of the key initiatives to be undertaken by employers. Furthermore, it is set to include provisions supporting the reconciliation of work and family responsibilities and any other essential aspect that would pose as an obstacle to women's full participation in the work life.³⁷⁸ Then, based on this policy, prefectural governments are also expected to respond to consultation requests from women and their families and strive to connect them with the appropriate organisations, provide relevant informations and advice and take all possible measures to support their participation in the workforce.³⁷⁹

Responsibilities of employers

Similarly to the responsibilities assigned to the national government and local authorities, employers are also expected to play a central role in promoting women's participation in employment. As such, employers are required to create opportunities for women's employment and establish a work environment that will allow women to balance their work and family responsibilities.³⁸⁰ More

³⁷⁵ *Ibid.*, Art. 2(1).

³⁷⁶ *Ibid.*, Art. 2(2).

³⁷⁷ *Ibid.*, Art. 2(3).

³⁷⁸ *Ibid.*, Art. 5.

³⁷⁹ *Ibid.*, Art. 6, and Y. Abe, M. Morita, and R. Shimada, "Working Conditions," p. 1.

³⁸⁰ Y. Abe, M. Morita, and R. Shimada, "Working Conditions," p. 2.

specifically, Section II of the Women's Advancement Promotion Act requires employers with more than 100 regularly employed workers to formulate an "Action Plan" to be implemented in their company or organisation. After doing so, they also have to notify the Ministry of Health, Labour and Welfare.³⁸¹ The plan has to specify its duration, set measurable goals for advancing women's participation and outline concrete initiatives along with their implementation timelines.³⁸² The MHLW can then certify employers and companies that have implemented appropriate initiatives, rewarding them with the right to display an official mark on their goods, products and advertisements to publicly signal their commitment to gender equality.³⁸³ As of October 2023, 2488 companies have obtained such certification which in turn allowed them to receive preferential access to the procurement of goods and services.³⁸⁴

Further requirements are demanded of employers with more than 300 regularly employed workers under Article 20 of the Act. This article in fact, mandates that these employers have to regularly and publicly disclose information relevant to women's career opportunities in their respective industries. This includes data on both the provision of opportunities for women and the development of work environments favourable for a balanced professional and personal life.³⁸⁵ In regards to employment opportunities, employers are required to publish at least one achievement out of the eight following items:

1. Percentage of women workers in recruitment,
2. Competitive ratio in recruitment by gender,
3. Percentage of women workers in the workforce,
4. Percentage of women workers in junior managerial positions,
5. Percentage of women workers in senior managerial positions,
6. Percentage of women on boards of directors,
7. Track record of changes in job type or employment status by gender,
8. Track record of rehiring or mid-career hiring by gender.³⁸⁶

Moreover, since 2022 they are also required to disclose the gender wage gap in their companies or organisations.³⁸⁷ In terms of working conditions, employers are similarly required to publish at least one indicator related to work-life balance such as

³⁸¹ WAPA, Art. 8(1).

³⁸² *Ibid.*, Art. 8(2).

³⁸³ *Ibid.*, Art. 9 and 10(1).

³⁸⁴ Y. Abe, M. Morita, and R. Shimada, "Working Conditions," p. 2.

³⁸⁵ WAPA, Art. 20.

³⁸⁶ Y. Abe, M. Morita, and R. Shimada, "Working Conditions," p. 2.

³⁸⁷ *Ibid.*

1. Average continuous service years by gender,
2. Percentage of continued employment of workers hired before and after 10 years by gender,
3. Rate of childcare leave usage by gender,
4. Average overtime hours per month for workers,
5. Average overtime hours per month for workers by employment type,
6. Percentage of workers taking paid leave,
7. Percentage of workers taking paid leave by employment type.³⁸⁸

The aim of these requirements is to promote transparency and support women's informed career choices while also encouraging employers to improve workplace equality.

2.5.2 Work-Style Reform Laws

The Work Style Reform Bill was also enacted under the Abe administration in 2018 as a “comprehensive legal package with proposed amendments to a total of eight laws including the Labor Standards Act.”³⁸⁹ Among the laws aimed to be amended through this reform was the Part-Time Employment Act, which would require that all workers, irrespective of their type of employment, receive the same treatment and compensation.³⁹⁰ In particular, where differences in treatment exist between regular and part-time employees within the same enterprise, this amendment would oblige employers to provide a clear explanation as to why that is. The reform also established criteria for assessing whether such differences are reasonable and introduced enforcement mechanisms for the protection of workers' rights.³⁹¹ While the revision does not explicitly mention women, the fact that they constitute the majority (roughly 68%) of atypical workers³⁹² indicates that it will inevitably affect their working conditions. Therefore, as the reform helps address differences in pay and treatment in the workplace, it can be understood as an indirect instrument for the promotion of gender equality in the employment.

³⁸⁸ *Ibid.*

³⁸⁹ Japan Institute for Labour Policy and Training, “Work Style Reform Bill Enacted,” *Japan Labor Issues*, Vol.2, No.10, 2018, p. 2.

³⁹⁰ Ministry of Health, Labour and Welfare “Outline of the Act on the Arrangement of Related Acts to Promote Work Style Reform,” Act No. 71 of 2018, Section III, p. 5. Available at: <https://www.mhlw.go.jp/english/policy/employ-labour/labour-standards/dl/201904kizyun.pdf>

³⁹¹ *Ibid.*, Section III (2)(3), p. 5.

³⁹² M. Riminucci, “Il diritto del lavoro e le riforme possibili: due esempi dal Giappone,” *Collana di studi giapponesi: ricerche*, No. 9, 2018, footnote 5, p. 140.

3. Structural, Legal and Policy Obstacles to Japan's Full Gender-Equality Compliance

3.1 Introduction

In the past, the Japanese government has acknowledged that while the status of women had improved, the “opportunities for women to fulfil their potential and fully contribute to society remain[ed] insufficient.”³⁹³ Indeed, thanks to the ratification of international human rights laws such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the ILO Conventions No. 100 and No. 156, alongside the enactment of domestic legislations such as the Equal Employment Opportunity Law, by 2007 women accounted for 41.4% of the workforce in Japan.³⁹⁴ At the same time, in order to further improve the condition of women, under the Abe administration (2006–2007, 2012–2020), the slogan “a society where all women shine,” started being used to promote female empowerment.³⁹⁵ Thus, this initiative resulted first in the 2006 amendment to the Equal Employment Opportunity Law and then in the adoption of the Women’s Advancement Promotion Act in 2016.

Yet, Japan remains known as a society with pronounced gender disparities. As established in this thesis Introduction, according to the 2025 Global Gender Gap Report released by the World Economic Forum in fact, Japan ranks 118th out of 148 countries,³⁹⁶ remaining the lowest ranked country among the G7 group.³⁹⁷ Furthermore, when looking at the table for the “Evolution of Global Gender Gap Index Scores Over Time,” it can be noticed that Japan’s results have remained virtually static since the Report’s first publication in 2006.³⁹⁸ Thus, questions on why gender inequality in employment persists regardless of how much women’s advancement has been promoted in Japan naturally arise. While it is undeniable that, over the past four decades, women’s advancement in the workplace has been heavily promoted, at least formally, by the Japanese government, in practice these new policies have struggled to be implemented and enforced. As a result, substantive gender equality in the workplace continues to remain a goal yet to be achieved.

³⁹³ Government of Japan, “Gender Equality in Japan,” *Gender Equality Bureau*, Cabinet Office, Tokyo, 2007, Preface. Available at: https://www.gender.go.jp/english_contents/pr_act/pub/pamphlet/gender-equality07/index.html

³⁹⁴ *Ibid.*

³⁹⁵ A. Iida, “How Do Women “Shine?” Exploring Professional Women’s Perceptions of “Women’s Advancement” in Japan,” *East Asia*, Vol. 41 No. 1, 2024, p. 2

³⁹⁶ World Economic Forum, *Global Gender Gap Report*, p. 39.

³⁹⁷ J. Speed, “Japan ranks 118th out of 148 countries in gender gap report.”

³⁹⁸ World Economic Forum, *Global Gender Gap Report*, p. 43.

As such, this chapter will examine the structural and policy obstacles that prevent Japan from full gender equality compliance, thus trying to explain the reasons behind the slow advancement of gender equality in the workplace in Japan. Section 3.2 will therefore firstly analyse the obstacles that prevent Japan from the full implementation of the provisions enshrined in the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Then, this section will also discuss the political and structural reasons for the non-ratification of ILO Conventions No. 111 on Discrimination in Employment and Occupation and No. 183 on Maternity Protection and their practical implications in society. Following, Section 3.3 will examine the structural and enforcement limitations of the two central Japanese legislations on gender equality in the workplace, the Equal Employment Opportunity Law, using the law's last amendment as reference, and the Women's Advancement Promotion Act of 2016. Lastly, Section 3.4 will analyse how structural barriers embedded in Japanese tax policies, such as the Marital Deduction Law, further hinder women's participation in professional life in Japan and therefore slow down the achievement of gender equality in employment.

3.2 Limited International Legal Commitments

3.2.1 The Japanese Constitution on International Sources and Their Interpretation

In its approach to the incorporation of international law, Japan is generally understood to follow a monist approach. As such, once it ratifies an international treaty, this directly becomes part of Japan's domestic law.³⁹⁹ Article 98(2) of the Japanese Constitution in fact provides that, following the approval of the National Diet, "treaties and established laws of nations shall be faithfully observed."⁴⁰⁰ However, as noted by Hanami, Komiya and Yamakawa, "the Constitution remains silent on the question of whether a signed and ratified international treaty itself has the value of law at national level."⁴⁰¹ As a result, the Japanese government has frequently interpreted the provisions enshrined in these treaties, and in particular those on socio-economic rights, as not being self-executing and therefore not directly granting individual rights.⁴⁰²

³⁹⁹ X. Beaudonnet, "How domestic jurisdictions use universal sources of international law," *Labour Education*, No. 143, 2006, p. 10.

⁴⁰⁰ T. Hanami, "The influence of ILO standards on law and practice in Japan," *International Labour Review*, Vol. 120, No. 6, 1981, p. 765.

⁴⁰¹ T. Hanami, F. Komiya and R. Yamakawa, *Labour Law in Japan*, para. 92.

⁴⁰² Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Third Periodic Report of Japan, Adopted by the Committee at Its Fiftieth Session*, (E/C.12/JPN/CO/3), 2013, para. 7, (CESCR 2013).

In practice, and as will be further analysed in the following sections, this interpretation has enabled the Japanese government to ratify some international UN treaties, such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, whilst maintaining a certain level of autonomy. In these cases, in fact, the government has maintained that the rights enshrined in these instruments were either already protected under the Japanese Constitution and other existing domestic legislations,⁴⁰³ or that, even where legislative adjustments were required, the provisions could later be interpreted as being non-self-executing and therefore not directly enforceable by domestic courts.⁴⁰⁴

By contrast, International Labour Organisation Conventions have typically been approached more cautiously, especially when they provided for the principle of gender equality in employment.⁴⁰⁵ Because ILO Conventions were generally assumed to have value of law at domestic level from the moment of their ratification,⁴⁰⁶ rather than relying on post-ratification interpretation, Japan generally ensured that domestic legislations were already in conformity with the obligations set out in the Conventions, or it made sure that domestic laws were amended prior to ratification.⁴⁰⁷ This was of particular importance considering that ILO Conventions were generally framed in broader terms, thus often not self-executing,⁴⁰⁸ and therefore required concrete legislative implementation.

3.2.2 Limits on the Implementation of the International Covenant on Economic, Social and Cultural Rights

Scope of obligations for Japan under the ICESCR

Japan ratified the International Covenant on Economic, Social and Cultural Rights in 1978 as a way to demonstrate to the international community its openness to international laws and the new global human rights standards.⁴⁰⁹ By doing so, and in the parameters defined by its own Constitution, Japan agreed to comply with the obligations set in the Covenant, including those enshrined in Article 3, which, as seen in Section 1.3.2, provides that

⁴⁰³ A. Hatano, H. Matsuda and Y. Neghishi, “The Impact of the United Nations Human Rights Treaties on the Domestic Level in Japan,” in *The Impact of the United Nations Human Rights Treaties on the Domestic Level: Twenty Years On*, Brill Nijhoff, 2024, pp. 667-668.

⁴⁰⁴ T. Webster, “International Human Rights Law in Japan: The View at Thirty,” *Columbia Journal of Asian Law*, Vol. 23, No. 2, 2010, p. 250 and Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Japan*, (CEDAW/C/JPN/CO/7-8), 2016, para. 8, (CEDAW Committee 2016).

⁴⁰⁵ T. Hanami, “The influence of ILO standards,” pp.765-766 and 768-769.

⁴⁰⁶ T. Hanami, F. Komiya and R. Yamakawa, *Labour Law in Japan*, para. 92.

⁴⁰⁷ T. Hanami, “The influence of ILO standards,” pp. 765-766.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ T. Webster, “International Human Rights Law in Japan,” p. 242

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.⁴¹⁰

Furthermore, and more relevant to the scope of this thesis, Japan also assumed the legal obligations provided under Article 10, previously analysed in Section 1.4.2.⁴¹¹

However, Article 2(1) specifies that

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.⁴¹²

As such, the Article only requires States Party to “progressively realise” the rights enshrined in the Covenant, without imposing an obligation for complete and immediate implementation. In other words, while the Covenant should not be interpreted as allowing indefinite delays in the enforcement of its rights after ratification, the wording of Article 2(1) allows States to retain a level of flexibility in the manner and pace of implementation.

Limited domestic effect and judicial use

The progressive character of the Covenant combined with the Japanese government’s belief that the economic social and cultural rights present in the ICESCR were already well protected by the Constitution and other existing legislations, such as the Labour Standard Law, led to its ratification without any domestic legislative developments.⁴¹³ Furthermore, although the Japanese legal hierarchy would place international treaty law below the Constitution but above all other domestic statutes, the language of the Covenant allowed for more ambiguous interpretation. As a result, because the ICESCR was posed as a “program of rights to be achieved over time” rather than a clearly stated provision directly opposing domestic law, it became unlikely that its obligations would be able to overturn national laws.⁴¹⁴ For these reasons, in both the 2001 and the 2013 concluding observations adopted by the Committee on Economic, Social and Cultural Rights, the concern that Japan had not

⁴¹⁰ ICESCR, Art. 3.

⁴¹¹ Article 10(1)(2) of the ICESCR provides that: 1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 2) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

⁴¹² ICESCR, Art. 2(1).

⁴¹³ A. Hatano, H. Matsuda and Y. Neghishi, “The Impact of the United Nations Human Rights Treaties,” pp. 667-668.

⁴¹⁴ T. Webster, “International Human Rights Law in Japan,” p. 245.

given effect to the provisions of the Covenant in domestic law in a satisfactory manner remained as a principal concern.⁴¹⁵

Owing to the Covenant's progressive nature and the government's interpretation of it, since the early 1980s Japanese domestic courts have also maintained that the ICESCR "does not have direct effect in Japan."⁴¹⁶ Consequently, courts have decided to "restrict the applicability of the Covenant's provisions,"⁴¹⁷ and have since consistently refused to apply it in domestic cases over domestic law.⁴¹⁸ As a result, this judicial reluctance to engage with the Covenant has remained as a central point of concern for the CESCR. As such, in both the 2001 and 2013 concluding observations, the Committee has expressed its worries that Japan's judicial decisions in domestic cases do not make reference to the Covenant "on the mistaken ground that none of its provisions [have] direct effect" and further conveyed their concerns that such interpretation by the Japanese government violates the obligations under the Covenant.⁴¹⁹

Non-ratification of the Optional Protocol

As analysed in Section 1.5.1 of this thesis, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, allows individuals citizens of a State Party the right to submit individual complaints of alleged violations of any ICESCR provision to the Covenant's Committee. As such, after Japan's ratification of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights (ICCPR), the National Diet adopted a supplementary resolution to invite the government to "monitor the implementation of the individual complaint mechanism [which at the time existed only for the ICCPR] and positively consider future ratification of the first optional protocol."⁴²⁰

However, while in the 1980s the government did not appear opposed to the introduction of such mechanisms, in the 1990s it started expressing concerns that such mechanisms could interfere with the independence of the judiciary domestic system. In this period in fact, Japanese judges had begun referring to international laws to make decision on domestic cases related to the events that happened

⁴¹⁵ Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights*, (E/C.12/1/Add.67), 2001, para. 10, (CESCR 2001) and CESCR 2013, para. 7.

⁴¹⁶ T. Webster, "International Human Rights Law in Japan," p. 250.

⁴¹⁷ A. Hatano, H. Matsuda and Y. Neghishi, "The Impact of the United Nations Human Rights Treaties," p. 668.

⁴¹⁸ T. Webster, "International Human Rights Law in Japan," p. 250.

⁴¹⁹ CESCR 2001, para. 10 and CESCR 2013, para. 7.

⁴²⁰ Y. Hayashi, "Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Japan," *Journal of East Asia and International Law*, No. 6, 2013, p. 351.

during World War I.⁴²¹ As a result, the government was concerned that, if it ratified the Optional Protocol to the ICESCR, the judges would become influenced by the authority of the United Nations in their decisions on domestic cases. This, combined with the absence of a national human right institution on Japanese territory, exposed the government to severe criticism from the international community, including the Human Rights Council,⁴²² and both international and domestic human rights organisations.⁴²³ Lastly, in more recent years, additional considerations have further shaped the government's cautious approach. As explained by Yoko Hayashi in her article in fact, in cases where a treaty body found a violation of human rights under an international treaty, the State Party may be required to pay monetary compensation to the victim. Thus, this prospect seems to have contributed to the government's reluctance to accept and ratify individual complaint mechanisms under human rights treaties and suggests that Japan is unlikely to ratify such procedures in the near future.⁴²⁴

Persistent concerns in CESCR Committee observations

According to Article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, States Party to the Covenant are required to routinely submit reports to the Committee on Economic, Social and Cultural Rights. These reports have the aim to highlight both the progress achieved and the difficulties encountered in implementing the obligations enshrined in the Covenant in the domestic legal framework. The Committee's review of these States reports then culminates with the adoption of "concluding observations" through which the CESCR makes suggestions and gives recommendation to the State on how to improve its actions.⁴²⁵ In this context, Japan has generally always complied with its reporting obligations across ratified treaties,⁴²⁶ submitting reports in 1998 and 2009 to the ICESCR Committee.

Irrespective of Japan's consistency in submitting these periodic reports, the impact of the ICESCR on the Japanese legal order has been limited.⁴²⁷ As such, both the 2001 and 2013 concluding observations adopted by the CESCR reveal that the measures taken by the government to promote gender equality in the workplace, as enshrined in the Covenant, have been insufficient. In the 2001 concluding observations in fact, the CESCR expressed its concerns about the

⁴²¹ Y. Hayashi, "Implementation of the Convention," p. 351 and A. Hatano, H. Matsuda and Y. Neghishi, "The Impact of the United Nations Human Rights Treaties," p. 624.

⁴²² Y. Hayashi, "Implementation of the Convention," p. 352.

⁴²³ A. Hatano, H. Matsuda and Y. Neghishi, "The Impact of the United Nations Human Rights Treaties," p. 610.

⁴²⁴ Y. Hayashi, "Implementation of the Convention," p. 352.

⁴²⁵ ICESCR, Art. 16 and Art. 17.

⁴²⁶ A. Hatano, H. Matsuda and Y. Neghishi, "The Impact of the United Nations Human Rights Treaties," p. 633.

⁴²⁷ *Ibid.*, p. 671.

Widespread discrimination against women and the *de facto* inequality that still exists between men and women in Japanese society in professional and decision-making positions, both in political representative bodies, public services and administration, and in the private sector.⁴²⁸

The Committee further emphasised the consistent disparity in wages between men and women and the “persisting practice in many enterprises of employing women primarily in the clerical services, with little or no chance of promotion to the professional ranks.” The continuation of these disparities despite the 1997 amendment to the Equal Employment Opportunity Law was identified as an additional cause of concern by the Committee.⁴²⁹

The CESCR reiterated similar worries in the 2013 concluding observations. Here in fact, it once again noted that “provisions which are discriminatory towards women, [...] continue to exist in the State party’s legislation insofar as Covenant rights are concerned, in spite of the State party’s efforts to ensure compliance with its obligations under the Covenant when undertaking legislative revisions.”⁴³⁰ Further, the Committee expressed concerns that, irrespective of measures adopted at national level to address this issue, “no sufficient measures have targeted a change of attitude on gender roles in society at large.”⁴³¹ In this regard, the CESCR also highlighted the slow progress made by Japan, as indicated by the “persistent vertical and horizontal gender segregation in the labour market and the high percentage of women who have to leave work or move to part-time employment after childbirth.”⁴³² Accordingly, the Committee expressed its regrets that Japan had set too conservative targets for the achievement of gender equality in the workplace, which would unlikely result in the achievement of substantive equality as quickly as the Covenant would request.

The recurrence of similar concerns across successive concluding observations by the Committee on Economic, Social and Cultural Rights, points to a pattern of structural challenges in the implementation of the obligations set out in the Covenant. As such, these repeated observations reveal the gap between formal domestic legislations and their practical implementation. In this sense, while Japan has taken steps to align itself with international human rights obligations, even if not necessarily with the Covenant, the CESCR’s persistent identification of similar issues in regards to the realisation of gender equality in the workplace indicates that such steps have not yet turned into substantive improvements. Consequently, this demonstrates that more targeted efforts are required to ensure the effective realisation of gender equality in the workplace as envisioned in the Covenant.

⁴²⁸ CESCR 2001, para. 15.

⁴²⁹ *Ibid.*, para. 17.

⁴³⁰ CESCR 2013, para. 10.

⁴³¹ *Ibid.*, para. 13.

⁴³² *Ibid.*

3.2.3 Limits on the Convention on the Elimination of Discrimination against Women Implementation in Japan

Scope of obligations for Japan under the CEDAW

Six years after the adoption of the Convention on the Elimination of Discrimination against Women by the United Nations and five after its initial signature, Japan ratified the CEDAW on the 25th June 1985. As such, Japan also accepted the obligations enshrined within the Convention. As a result, it was required to address all structural barriers that perpetuate discrimination against women by adopting measures that would require not only equality of opportunity, but, most importantly, equality of outcome,⁴³³ or the achievement of substantive equality. More specifically, through Article 2, Japan was required to incorporate the principle of gender equality in all national legislations, institute sanctions towards all institutions not conforming with such obligation and take all appropriate measures to eliminate any form of discrimination against women from “existing laws, regulations, customs and practices.”⁴³⁴

This last point was further reinforced and highlighted in Article 5(a) which states that Japan, as a ratifying country, would have to

Modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁴³⁵

Such measures would have to be taken irrespective of whether these cultural patterns were considered to be “convenient, ‘reasonable’ or culturally justified.”⁴³⁶ As such, through Article 5 the CEDAW requires all ratifying states, including Japan, to address all structural and cultural barriers that could lead to or perpetuate gender discrimination and that are instead often used as rationale to enable the preservations of ideologies and traditions contributing to gender inequality.⁴³⁷

Limited domestic effect and judicial use

As already introduced, one of the main reasons for the limited domestic impact of international treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women,

⁴³³ B. E. Hayes, “CEDAW’s efficacy and gender regime (im)mutability in Japanese university institutions,” *立命館国際研究*, Vol. 27, No. 2, 2014, p. 31.

⁴³⁴ CEDAW, Art. 2.

⁴³⁵ *Ibid.*, Art. 5(a).

⁴³⁶ B. E. Hayes, “CEDAW’s efficacy,” p. 31.

⁴³⁷ B. E. Hayes, “CEDAW’s efficacy,” p. 32 and A. Hatano, H. Matsuda and Y. Neghishi, “The Impact of the United Nations Human Rights Treaties,” p. 681.

on Japanese laws is the reluctance of courts to apply these instruments in domestic cases.⁴³⁸ Although this has not prevented Japanese women from filing lawsuits invoking the Convention in front of domestic courts, including cases of gender discrimination in employment, the impact that this instrument has had on such cases remains limited. As such, while the CEDAW has been referred to and cited in several judicial reasoning, it has not served as a decisive legal basis for successful claims.⁴³⁹ Therefore, as noted by Yoko Hayashi, member of the Committee the Elimination of Discrimination against Women, “there have been no court cases in Japan in which the plaintiffs prevailed on the grounds of the Women’s Convention.”⁴⁴⁰

The marginal role given to the Convention in domestic cases was also noted by the CEDAW Committee in its 2009, 2016 and 2024 concluding observations. In the 2009 report in fact, after expressing its concerns regarding the fact that the CEDAW “has not been given central importance as a binding human rights instrument,”⁴⁴¹ the Committee urged Japan to implement immediate measures to ensure that the Convention would become fully applicable in the domestic legal system and that its provisions would be incorporated into national legislations, including through the introduction of sanctions.⁴⁴² In 2016, the Committee reiterated similar concerns noting the insufficient implementation of previous recommendations. In particular, the Committee expressed its worries concerning the fact that in 2014, the High Court of Tokyo ruled that it could not recognize the Convention as directly applicable or self-executing.⁴⁴³ These concerns have persisted in the most recent concluding observations,⁴⁴⁴ in which the Committee once again urged Japan to strengthen enforcement measures so that the Convention may be fully taken into account in legal proceedings.⁴⁴⁵

An example of this judicial approach is provided by Kyoto Women’s Centre Case, discussed by Yoko Hayashi in the context of gender discrimination in employment. In this case in fact, the plaintiff, who was a part-time councillor employed with a fixed-term contract by the Kyoto Women’s Centre, argued that her wages were disproportionately low in comparison to those of full-time employees. As such, she claimed that that was a violation of Article 11 of the CEDAW as well as a violation of the

⁴³⁸ A. Hatano, H. Matsuda and Y. Neghishi, “The Impact of the United Nations Human Rights Treaties,” 627.

⁴³⁹ Y. Hayashi, “Implementation of the Convention,” pp. 345-348 and A. Hatano, H. Matsuda and Y. Neghishi, “The Impact of the United Nations Human Rights Treaties,” pp. 676-678.

⁴⁴⁰ Y. Hayashi, “Implementation of the Convention,” p. 348.

⁴⁴¹ Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, (CEDAW/C/JPN/CO/6), 2009, para. 19, (CEDAW Committee 2009).

⁴⁴² *Ibid.*, para. 20.

⁴⁴³ CEDAW Committee 2016, para. 8.

⁴⁴⁴ Committee on the Elimination of Discrimination against Women, *Concluding observations on the ninth periodic report of Japan*, (CEDAW/C/JPN/CO/9), 2024, para. 9(a)(b), (CEDAW Committee 2024).

⁴⁴⁵ *Ibid.*, para. 10.

non-discrimination clause in the Labour Standard Act, the International Covenants on Economic, Social and Cultural Rights and in the ILO Convention No. 100. As more women are employed on fixed-term contracts than men, she argued that this disparity in wages constituted a form of gender-based discrimination. However, the Osaka High Court dismissed her argument by interpreting the CEDAW not as an instrument establishing individual rights or common norms, but merely as a declaration of a rule to be respected by international community. Therefore, the court found that the Convention was not applicable to the principle of equal pay for work of equal value.⁴⁴⁶

This instance demonstrates that Japanese courts prefer to rely on domestic legislations, treating international human rights treaties “merely [as] a supplementary yardstick”⁴⁴⁷ rather than directly enforceable sources of law. In practice, this reliance on domestic legislations can however lead to situations in which gender equality standards established under international law are not fully respected. Consequently, this judicial approach could lead individuals to believe that they cannot effectively rely on the CEDAW, and other human rights treaties, when seeking remedies towards alleged violations as they do not carry significant weight in domestic courts. As a result, the limited implementation of such treaties in domestic cases weakens the overall effectiveness of the judicial enforcement of gender equality in Japan.

Non-ratification of the Optional Protocol

In 1999 the United Nations General Assembly adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. The Protocol entered into force the following year and granted individuals who claimed to be victims of violations of the rights enshrined in the Convention the ability to submit complaints directly to the CEDAW Committee once having exhausted all available domestic measures. Similarly to its position regarding the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights however, Japan has neither signed nor ratified the Optional Protocol to the CEDAW. As a result, individuals under its jurisdiction are unable to access this individual complaint mechanism, thus excluding them from seeking further remedies outside the legal system.

As such, and similarly to the reason behind the non-ratification of the ICESCR-OP, this non-ratification can be understood in broader judicial consideration. By not ratifying the Optional Protocol to the CEDAW in fact, Japanese courts can avoid receiving direct criticisms from treaty bodies on their judgments on matters relating specifically to gender discrimination, area in which Japan, as

⁴⁴⁶ *Kyoto Women's Centre case*, Osaka High Court (16 July 2009). See Y. Hayashi, “Implementation of the Convention,” pp. 348-349.

⁴⁴⁷ A. Hatano, H. Matsuda and Y. Neghishi, “The Impact of the United Nations Human Rights Treaties,” p. 627.

argued in this thesis, still requires improvement. As such, although international treaty bodies should supersede domestic laws, Japanese courts are able to bypass the obligations enshrined into international human rights instruments and scarcely apply them to interpret national legislations. This practice is further supported by the absence of national or regional human rights institutions that would be able to put more pressure on both governments and courts in the implementation and enforcements of the CEDAW.⁴⁴⁸ In this context, the non-ratification of the CEDAW Optional Protocols while reducing the pressure on States to appropriately implement the rights enshrined in the Convention, overall weakens the overall effectiveness of mechanisms aimed at the enforcement of substantive gender equality in Japan.

Persistent concerns in CEDAW Committee observations

Similarly to the reporting mechanism analysed for the International Covenant on Economic, Social and Cultural Rights, and in accordance with the obligations set forward in Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Japan, as a ratifying country, is also required to submit periodic reports to the CEDAW Committee.⁴⁴⁹ While the concluding observations thus adopted do not have a coercive undertone, they still allow the treaty body to denounce possible violations of the Convention while also helping the State find possible solutions to tackle them.⁴⁵⁰ In this context, and as previously mentioned, Japan has been consistent in submitting these periodic reports to the Committee since its ratification of the Convention in 1985, and it has since experienced constructive dialogue with it.⁴⁵¹

However, when looking at the concluding observations adopted in 2009, 2016 and 2024 a pattern becomes visible. In all three concluding observations in fact, the Committee has expressed its concerns regarding the persistence of gender inequality in the field of employment. Starting from 2009, the Committee expressed its concern regarding women's disadvantaged position in the labour market. Specifically, it expressed worry in regards to the "employment management category" present in the Administrative Guideline of the EEOL as it feared it might provide leeway, as it eventually did, for employers to introduce a track-based system of employment which discriminated against women. Furthermore, the Committee was concerned about the persistence of a high gender wage gap, of roughly 32.2% among full-time workers, which would further increase among part-

⁴⁴⁸ The Japan Federation of Bar Associations, "Resolution Requesting the Implementation of an Individual Complaints Procedure and the Establishment of a National Human Rights Institution," 2019. Available at: https://www.nichibenren.or.jp/en/document/statements/2019_2.html

⁴⁴⁹ CEDAW, Art. 18.

⁴⁵⁰ A. Hatano, H. Matsuda and Y. Neghishi, "The Impact of the United Nations Human Rights Treaties," footnote 13.

⁴⁵¹ *Ibid.*, p. 345.

timers, who were predominantly women. This also increased their concerns in regards to the vertical and horizontal occupational segregation between men and women characterising Japanese workplaces. Lastly, the Committee expressed worries concerning the absence from domestic legislations of the principle of equal pay for work of equal value enshrined in both the CEDAW and the ILO Convention No. 100 which Japan had also ratified.⁴⁵²

Irrespective of the adoption in 2015 of the Women's Advancement Promotion Act, for which the CEDAW Committee commended Japan, similar concerns were present in the 2016 concluding observations. Here, the Committee once again expressed its worries concerning the perseveration of both vertical and horizontal occupational segregation and the concentration of women in lower paying sectors, at least partially attributable to the two-track employment system. These concerns were worsened by the continued concentration of women in part-time work resulted from the social and cultural expectation that women had to work less in order to accommodate their family responsibilities, which however would directly affect their pension benefits and could lead to post-retirement poverty. Moreover, the continued lack of adequate provisions and sanctions within domestic legislation together with the widening gender wage gap, led the Committee to worry about the non-ratification of ILO Convention No. 111 on Discrimination in Employment and Occupation and the persistent inadequate enforcement of the principle of equal pay for work of equal value.⁴⁵³

Lastly, the same concerns were also present in the most recent concluding observations adopted in 2024. Here, once again, the CEDAW Committee expressed its worries in regards to the persistence of the gender pay gap, connected to the absence of adequate enforcement of the principle of equal pay for work of equal value, and of the continued concentration of women in low-paying clerical position and part-time work, resulting from the dual-track employment system and connected to the expectations that women had to be the primary caretakers of their family. The Committee also expressed worries concerning the low percentage of women in managerial positions,⁴⁵⁴ the gender bias issues in AI's hiring algorithms and in the limited grounds for indirect discrimination addressed in the amendment to the Equal Employment Opportunity Law.⁴⁵⁵

Similarly to the case of the ICESCR Committee's concluding observations, the repetition of identical concerns in the CEDAW Committee's reports highlights Japan's limited compliance with the Convention's obligations. Thus, despite the existence of a relatively comprehensive legislative

⁴⁵² CEDAW Committee 2009, para. 45.

⁴⁵³ CEDAW Committee 2016, para. 34.

⁴⁵⁴ In 2024 the share of women in managerial position was 15%.

⁴⁵⁵ CEDAW Committee 2024, para. 39.

framework aimed at promoting gender equality in employment originated from Japan's ratification of the CEDAW, these repetitions emphasise the persistent discrepancy between formal legislations and their actual execution. In other words, while Japan might have, for the most part, achieved *de iure* equality, it is still not able to ensure *de facto* equality in the workplace. Furthermore, as analysed in Chapter 2 of this thesis, with the exception of the Women's Advancement Promotion Act, the majority of Japan's central legislation in this field, along with the subsequent amendments, had already been established by 2009. Therefore, the reiteration of the same concerns over a period of almost fifteen years, with the most recent observation being made in 2024, demonstrates Japan's persistent reluctance to move beyond formal compliance and fully realise the substantive obligations enshrined in the Convention.

3.2.4 Issues with the Non-Ratification of ILO Conventions No. 111 And No. 183

Normative framework of ILO Conventions No. 111 and No. 183

As previously analysed in Section 1.3.1, the ILO Conventions No. 111 on Discrimination in Employment and Occupation broadly establishes that any form of discrimination undermines the principal of equality enshrined in the Universal Declaration of Human Rights. As such, States Party to this Convention are required to "pursue a national policy designed to promote [...] equality of opportunity and treatment in respect of employment and occupation."⁴⁵⁶ In practice, this would entail taking active measures to eliminate all domestic discriminatory provisions and to instead introduce new laws promoting substantive gender equality in the workplace. At the same time, and as examined in Section 1.4.1, the ILO Conventions No. 183 on Maternity Protection specifically addresses women's rights to employment during and after pregnancy. More specifically, the aim of the Convention is to strengthen protections against dismissal and discrimination on the grounds of pregnancy and maternity, thus reinforcing women's rights to continued employment and security in the workplace.

Structural and political reasons for non-ratification

Japan was a member of the International Labour Organisation from 1919 to 1940 and then again since 1951. Yet, despite its long-lasting membership, it remains one of only twelve Member States to not have ratified the ILO Convention No. 111.⁴⁵⁷ On the other hand, Japan's non-ratification of ILO Convention No. 183 has attracted far less attention from the international community since, as of

⁴⁵⁶ ILO C111, Art. 2.

⁴⁵⁷ International Labour Origination, Ratification to ILO Convention No. 111 Discrimination (Employment and Occupation), *Normlex*. Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312256:NO (As of April 2026)

December 2025, only 45 States have ratified this Convention,⁴⁵⁸ none of which are located in the Asian region.⁴⁵⁹

As previously discussed, the logic behind this non-ratification can be reconducted to the same reluctance to allow international law to constrain domestic legal autonomy. This also being the reason for Japan's interpretation of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. However, while Japan has been able to ratify both the ICESCR and the CEDAW, albeit with different degrees of effective implementation, as well as ILO Conventions No. 100 and No. 156, since their provisions were already reflected in national legislation,⁴⁶⁰ it remains reluctant to ratify ILO Convention No. 111 on Discrimination in Employment and Occupation, and, to a lesser extent, ILO Convention No. 183 on Maternity Protection. This hesitation likely stems from both the substantial legislative amendments these conventions would require,⁴⁶¹ and also from the need to challenge deeply rooted social and cultural norms.

The current Japanese domestic legislation is in fact not completely aligned with the rights enshrined in the ILO Convention No. 111. For instance, and on a more general level, Article 1 of the Convention provides for a comprehensive definition of discrimination covering multiple prohibited grounds,⁴⁶² while Japan still lacks a single, comprehensive act on non-discrimination.⁴⁶³ Japan has nonetheless introduced some domestic legislations for the elimination of gender discrimination in employment, most notably the Equal Employment Opportunity Law and its amendments, which would help cover at least some of the discriminatory grounds required by the Convention. However, as exemplified by the EEOL's third chapter on Dispute Resolution, Japan has traditionally relied on voluntary resolution, mediation and administrative guidance rather than punitive measures for the enforcement of its provisions,⁴⁶⁴ which would not fully comply with the obligations set in Article 3 of the Convention. The Article in fact, calls for more effective implementation of the Convention

⁴⁵⁸ International Labour Organisation, "Spain ratifies the ILO Convention on Maternity Protection," 2025. Available at: <https://www.ilo.org/resource/news/spain-ratifies-ilo-convention-maternity-protection#:~:text=Spain%20is%20the%2045th%20ILO,safety%20of%20mothers%20and%20children>

⁴⁵⁹ International Labour Organisation, *ILO Country Brief: Care at work in China*, 2024, p. 1.

⁴⁶⁰ The provisions under the ILO Convention No. 100 were already enshrined into Article 4 of the Labour Standard Law. Similarly, the provisions under ILO Convention No. 156 were protected under the Child Care and Family Care Leave Law of 1995.

⁴⁶¹ K. Kurosawa, "We welcome ratification of ILO Convention No. 105 and demand early ratification of No. 111," *Zenroren*, 2022. Available at: [\(June 8, 2022\) Statement We welcome ratification of ILO Convention No. 105 and demand early ratification of No. 111](#)

⁴⁶² ILO C111, Art. 1.

⁴⁶³ CEDAW Committee 2024, para. 11.

⁴⁶⁴ S. Assmann, "Gender Equality in Japan," p. 7.

through the appropriate enforcement structures.⁴⁶⁵ Furthermore, while some recognition of indirect discrimination has been introduced through the 2006 amendment to the EEOL, its scope remains limited, particularly where it concerns traditional employment practices such as the dual-track career system, and the long working hours which disproportionately disadvantage women.⁴⁶⁶ Consequently, while Japan has made some progress in addressing formal gender discrimination, these discrepancies demonstrate the extent to which full compliance with Convention No. 111 would require further amendments to domestic legislations and also a more fundamental transformation of existing employment structures.

Similarities also emerge in the case of the non-ratification of the ILO Convention No. 183 on Maternity Protection. As noted by professor Hanami, the same reasons for the non-ratification of previous maternity protection instruments, such as ILO Conventions No. 3 and No. 103, continue to remain relevant. For instance, under the Labour Standard Law, a woman may begin work five weeks after confinement upon request and with a doctor permission, an exception not permitted under the ILO Conventions.⁴⁶⁷ Similarly, current Japanese domestic laws do not satisfy the condition for additional or extended leave in the case of sickness caused by pregnancy or confinement, nor do they allow for paid nursing breaks.⁴⁶⁸ As these conditions continue to be a requirement under the ILO Convention No. 183, Japan's ratification of this convention would entail important adjustments in domestic legislations. Furthermore, while such amendments would not be impossible to make, the relatively low global rates of ratification for Convention No. 183, have likely reduced international pressure on Japan, thus contributing to a limited sense of urgency in pursuing ratification.

Practical implications of non-ratification

The non-ratification of the ILO Conventions No. 111 and No. 183, therefore allows Japan to avoid being bound by the obligations concerning non-discrimination and maternity protection set in these instruments. Then, this position, allows Japan to refrain from undertaking substantial reforms to its national legislations. By doing so, the country is also able to preserve its traditional cultural and social structures, such as the male breadwinner model and the lifetime employment system, as it remains out of the ILO's monitoring mechanisms and periodic reporting obligations. As a result, while the Japanese government continues to face external pressure, especially concerning the ratification of the

⁴⁶⁵ ILO C111, Art. 3.

⁴⁶⁶ M. Starich, "The 2006 Revisions," 565-572 and G. Eweje, *et Al.* "Gender equality discourse: a Japanese context" *Corporate Governance: The International Journal of Business in Society*, Emerald Publishing Limited, Vol. 25, No. 8, 2025, p. 262.

⁴⁶⁷ LSA, Art. 65.

⁴⁶⁸ T. Hanami, "The influence of ILO standards," pp. 775-776.

ILO Convention No. 111,⁴⁶⁹ it is still able to limit direct external influences on its domestic legal framework thus maintaining a higher degree of policy discretion.

3.3 Deficiencies in Domestic Legislations

3.3.1 Equal Employment Opportunity Law

With the 2006, and most recent, amendment to the Equal Employment Opportunity Law, the Ministry of Health, Labour and Welfare aimed at addressing all the issues left unanswered by the 1997 version of the law. As such, it addressed “indirect discrimination, adverse treatment for taking childcare leave, and provide new enforcement measures for sexual harassment.”⁴⁷⁰ Yet, even after this last revision, the EEOL continues to remain limited in its effectiveness due to its structural and enforcement deficiencies.

The dual-track career system

The dual-track career system emerged soon after the enactment of the 1985 EEOL, as a way for employers to circumnavigate the provisions enshrined in the new law. Thus, this allowed new recruits to choose between either the *sogo-shoku*, the managerial track, or the *ippan-shoku*, the standard or general track. The former had more opportunities for future promotions to managerial positions and higher wages, but also required employees to agree to longer working hours and transfers. At the same time, the latter included duties such as copying, serving tea and clerical work, which were most associated with the figure of the “office lady,” and was also characterised by lower wages, benefits and possibilities of promotion.⁴⁷¹ While workers were, in theory, allowed to choose which ever track best fitted their abilities and preferences, a 1990 report of the MHLW reported that “ninety-nine percent of Japanese working men worked in management track positions, while more than ninety-six percent of working women worked in general track positions.”⁴⁷² Furthermore, while men were often directly placed into the managerial track, women had to demonstrate exceptional skills and outstanding educational achievements, as well as their willingness to prioritise their career over their possible future family in order to be chosen.⁴⁷³ This system was based on the belief that “women’s domestic labour required protection from the demands of regular employment.”⁴⁷⁴ Therefore, the practice of channelling women into the *ippan-shoku* track was understood to be a form of preferential

⁴⁶⁹ Kurosawa Koichi, “We welcome ratification.”

⁴⁷⁰ M. Starich, “The 2006 Revisions,” p. 561.

⁴⁷¹ *Ibid.*, p. 566.

⁴⁷² H. Hayashi, “Sexual Harassment in the Workplace and Equal Employment Sexual Harassment in the Workplace and Equal Employment Legislation,” *St. John's Law Review*, Vol. 69, No. 1-2, 1995, p. 41.

⁴⁷³ R. Larsen, “Ryōsai Kenbo Revisited,” pp. 209-210.

⁴⁷⁴ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 169.

treatment which however simultaneously allowed for the legitimisation of gender discrimination in employment.⁴⁷⁵ While this practice clearly highlights the indirect discrimination that women had to face in fact, the MHLW ruled that as long as admission onto a specific track was not based on sex, but on the “worker's ability and willingness to accept the working conditions,” the double-track system was not discriminatory and therefore did not violate the EEOL.⁴⁷⁶

This practice was technically prohibited in 2002, when the Tokyo District Court ruled that “it was illegal to operate a personnel management scheme which differentiated between the hiring of men and that of women.”⁴⁷⁷ This decision was made possible by the provisions enshrined in the newly amended EEOL,⁴⁷⁸ which came into force in 1999, and which clearly prohibited direct discrimination against women in recruiting, hiring, assignment and promotion.⁴⁷⁹ Yet, in practice, very little change was achieved.

For this reason, one of the aims of the 2006 amendment to the EEOL, was to address and prohibit specific forms of indirect gender discrimination,⁴⁸⁰ which had allowed for the perpetuation of the dual-track system. As discussed in Section 2.3.2, together with this amendment, the MHLW drafted an ordinance identifying three specific practices in hiring and promotion, that although neutral-looking, tended to disproportionately disadvantage women. However, the scope of these provisions was notably limited. During the MHLW Labor Policy Council meeting in fact, at least other four other forms of indirect discrimination were discussed yet ultimately not included in the proposal:

1. Requiring specific educational qualifications not essential to the role,
2. Limiting the eligibility of welfare and family benefits to workers registered as the head of the family,
3. Giving preferential treatment to regular employees even if they perform the same work as non-regular employees,
4. Excluding non-regular employees from welfare and family benefits even if they perform the same work as regular employees.⁴⁸¹

As such, by officially recognising only a narrow set of discriminatory practices, employers using the dual-track career system were able to circumvent these limitations, thus perpetuating such

⁴⁷⁵ *Ibid.*

⁴⁷⁶ H. Hayashi, “Sexual Harassment in the Workplace,” pp. 41-42.

⁴⁷⁷ J. Kumamoto-Healey, “Women in the Japanese labour market,” p. 451.

⁴⁷⁸ *Ibid.*, p. 464.

⁴⁷⁹ EEOL, Art. 5 and Art. 6.

⁴⁸⁰ T. Hanami, F. Komiya and R. Yamakawa, *Labour Law in Japan*, para. 257.

⁴⁸¹ M. Starich, “The 2006 Revisions,” p. 566.

practices.⁴⁸² Furthermore, as noted by lawyer Megan Starich, because Japanese courts identified the EEOL as “merely a statement of policy that illustrates the current social trends,”⁴⁸³ although a doctrine to invalidate some discriminatory practices was developed, “they have been reluctant to apply this doctrine to the realm of hiring and recruitment, where indirect discrimination most likely occurs.”⁴⁸⁴

As a result, despite the enactment and following amendments of the Equal Employment Opportunity Law and the ruling directly prohibiting such practices, the dual-track system of employment persists in Japan. As highlighted in a 2025 article by the Oxford Human Rights Hub, it was not until 2024 that indirect discrimination at work was formally recognised by a Japanese court. In the *AGC Greentech case* in fact, the Tokyo District Court decided that a company operating under the dual-track employment system, had given employees on the clerical career track, which was mostly occupied by women, a much lower housing allowance in comparison with employees on the main career track, or managerial track, which was mostly occupied by men. As such, the court found that this constituted ground for indirect gender discrimination. This case therefore demonstrates that, while instances of blatant discriminatory treatment against women have diminished in Japan since the enactment of the EEOL, “systems disguised as sex-neutral, or personnel systems with no discriminating intention but with structurally disadvantageous effects on women, (such as granting more benefits to the primary career track while, in practice, disproportionally limiting access to it to men) are on the rise.” Such instances confirm that indirect gender discrimination remains a significant barrier to the achievement of substantive gender equality in Japan, reflecting concerns raised by the CEDAW Committee that “indirect discrimination [is] not properly positioned under Japanese laws.”⁴⁸⁵

Weak enforceability and lack of sanctions

As analysed in Section 2.3.3, since its adoption, Japan has approached the EEOL as a not legally binding form of soft-law, which relied primarily on the employers’ voluntary compliance.⁴⁸⁶ As such, while private enterprises were encouraged to adhere to its provisions, the absence of sanctions for

⁴⁸² A common practice is to require managerial track employees to graduate from prestigious universities, which are often only attended by men. See J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion to Gender and Japanese Culture*, Routledge, 2020, p. 162.

⁴⁸³ M. Starich, “The 2006 Revisions,” p. 567.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ Y. Kuroiwa, “Gender Indirect Discrimination at Work First Approved in Japan,” Oxford Human Rights Hub, 2025. Available at: [Gender Indirect Discrimination at Work First Approved in Japan | OHRH](#)

⁴⁸⁶ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 162 and R. Larsen, “Ryōsai Kenbo Revisited,” p. 222.

non-compliance weakened its enforcement.⁴⁸⁷ This lack of penalty provisions has been the cause of long lasting concerns that have however not been quelled even by the EEOL most recent amendment.⁴⁸⁸ Furthermore, and as observed by Starich in fact, “the drafters of the 2006 Revision did little to alter the existing remedies for employees.”⁴⁸⁹ Thus, while some Western scholars have argued that punitive measures, such as fines and criminal sanctions, should be implemented into the law as to incentivise employers to follow it, their Japanese counterparts have reiterated that such litigious methods would not blend with Japan’s cultural environment built around social harmony and consensus.⁴⁹⁰

However, as further argued by Starich in her article, even accepting that Japan is not suited to litigation, “mediation by the MHLW’s Equal Employment Opportunity Mediation Commission (“EEOMC”) is equally insufficient to deter discriminatory behaviour or comply with constitutional principles.”⁴⁹¹ As defined under Articles 15 through 24 of the EEOL in fact, the effectiveness of mediation depends once again on the voluntary compliance and cooperation of both parties to the dispute. In this context, the role of the Commission’s officials remains limited, as they are only allowed to give advice and recommendations, both of which are legally non-binding, on how the issue might be best resolved.⁴⁹² Furthermore, while failure to comply may result in a public announcement to the media, no other punitive measures are in place, and even the potential threat of a lawsuit is often ineffective since discrimination is difficult to prove in court and the trial can be lengthy and costly,⁴⁹³ thus further discouraging employees from pursuing claims.

Prohibition of adverse treatment for taking childcare leave

Trought Article 9, the 2006 version of the EEOL introduced further protection for women who take maternity and childcare leave. The Article in fact, prohibits employers from “dismiss[ing] or treat[ing] female workers disadvantageously” on the grounds of marriage, pregnancy and childbirth.⁴⁹⁴ As such, through a series of ministerial ordinances the MHLW defined three prohibited

⁴⁸⁷ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 162.

⁴⁸⁸ R. Larsen, “Ryōsai Kenbo Revisited,” p. 222 and N. Courmadias, Y. Fujimoto and C. E.J. Härtel., “Japanese Equal Employment Opportunity Law,” p. 112.

⁴⁸⁹ M. Starich, “The 2006 Revisions,” p. 570.

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*, p. 571.

⁴⁹² EEOL, Art. 17.

⁴⁹³ R. Larsen, “Ryōsai Kenbo Revisited,” p. 222 and M. Starich, “The 2006 Revisions,” p. 571 and H. Nakakubo, “Gender Equality in the workplace from a legal perspective,” p. 18.

⁴⁹⁴ EEOL, Art. 9.

reasons for termination or disadvantageous treatment connected to these grounds.⁴⁹⁵ However, working mothers in Japan often face discriminatory conditions in the workplace with reports of female workers being dismissed, having renewal of fixed-term contract refused, or being otherwise harassed due to pregnancy or childbirth still a common occurrence.⁴⁹⁶

In this context, while the 2006 version of the EEOL tries to limit discriminatory treatment by employers, it does not place any positive duty on them to accommodate employees taking childcare leave. Similarly, this amendment fails to address employers who do not adequately redistribute workloads in the absence of one of their employees, nor does it offer appropriate guidance on implementing more flexible working arrangements to respond to the evolving need of both parent employee and their co-workers. In practice, this means that employers often redistribute the work by giving it all to their remaining female employees, thus continuing the cycle of workplace discrimination. In turn, this results in many women quitting their job rather than taking childcare leave as “they [are] reluctant to force extra work on their coworkers.”⁴⁹⁷ Furthermore, the language used in the revision limits its applicability to the three types of prohibited employer conduct defined by the MHLW. The revision also falls short in addressing disadvantageous treatment and harassment on the part of other employees. For instance, it does not equip courts with effective mechanisms to address or prevent workplace hostility. As a result, given the inherent difficulty in proving workplace hostility and the tendency of Japanese courts to address discriminatory issues related to maternity leave and marriage mainly in cases where discrimination is clearly documented,⁴⁹⁸ more subtle instances of systemic gender discrimination are likely to be left unremedied. Ultimately, while the 2006 revision to the EEOL represents a step forward in formalising protections against adverse treatment for taking childcare leave, its limited scope heavily impacts its practical implementation.

⁴⁹⁵ These reasons are: 1) termination for using or requesting the protection of the maternal health provisions of the EEOL, 2) requesting maternal health protection under the Labor Standards Law and 3) termination under the pretence of inefficiency or inability of a female employee to do manual labour after a female employee has conceived or given birth.

⁴⁹⁶ H. Nakakubo, “Gender Equality in the workplace from a legal perspective,” p. 20.

⁴⁹⁷ C. Weathers, “Equal Opportunity for Japanese Women – What Progress?”, *The Asia-Pacific Journal Japan Focus*, Vol. 3, No. 10, 2005. Available at: [Equal Opportunity for Japanese Women - What Progress? - Asia-Pacific Journal: Japan Focus](#)

⁴⁹⁸ M. Starich, “The 2006 Revisions,” pp. 568-570.

3.3.2 Women's Advancement Promotion Act

The Women's Advancement Promotion Act, adopted in 2016 as a supporting measure to the EEOL, had the aim to set numerical goals for employers to achieve in order to keep track of what was being done, in practice, to realise gender equality in Japanese workplaces.⁴⁹⁹ While the Act has been recognised as a positive step, albeit mild, towards the achievement of substantive equality, there are still doubts about the effectiveness of such legislation. The law in fact, presents several structural weaknesses, such as its non-binding nature, the reliance on employers-set targets, and the lack of mandatory standards and sanctions in case of non-compliance, that heavily impact its effectiveness in practice.

Non-binding nature

The first issue that comes up while analysing the Women's Advancement Promotion Act, is the fact that, while the Act imposes positive duties on employers it does not set binding obligations.⁵⁰⁰ For instance, Article 8 provides that employers must “assess the current situation and analyse issues to be addressed relating to female participation and career advancement in the workplace”⁵⁰¹ in four key areas,⁵⁰² and then define and publicise an Action Plan to be submitted to the MHLW.⁵⁰³ In addition, under Article 20(1), and separately from the action plan, employers must also periodically disclose informations regarding women's engagement in professional life in their business “to contribute to choice of occupations.”⁵⁰⁴ Yet, despite these requirements, and while it has become increasingly clear in recent years that employers are expected to take steps for the improvement of women's participation in professional life,⁵⁰⁵ in practice they are not required to achieve any concrete results. The law in fact, fails to impose binding obligations on employers to meet the targets set out in the Action Plan, thus reinforcing its non-binding nature and highlighting its limitations in promoting measurable and result-oriented progress.

Reliance on employers-set goals and limited scope

Article 8 also illustrates the limitations in both the effectiveness and scope of the law. The Article in fact, provides that the specifics of the Action Plan, from the numerical targets to be set to the

⁴⁹⁹ WAPA, Art. 8.

⁵⁰⁰ A. Hatano, H. Matsuda and Y. Neghishi, “The Impact of the United Nations Human Rights Treaties,” p. 675.

⁵⁰¹ H. Nakakubo, “Gender Equality in the workplace from a legal perspective,” p. 22.

⁵⁰² These areas are: female hiring rate, gender differences in the number of years of continuous employment, the state of working hours, and the ratio of female workers in managerial positions. See WAPA, Art. 8(3).

⁵⁰³ WAPA, Art. 8(1) through (5).

⁵⁰⁴ *Ibid.*, Art. 20(1).

⁵⁰⁵ H. Nakakubo, “Gender Equality in the workplace from a legal perspective,” p. 22.

timeline to be followed, are left entirely to the discretion of employers.⁵⁰⁶ This framework has therefore naturally led to questions on the effectiveness of the law itself as this flexibility could lead employers to set minimal targets simply to achieve formal compliance without making any meaningful effort to promote substantive change. Furthermore, the Article also restricts the scope of applicability of the law. It provides, in fact, that only employers with more than 100 employees are required to establish and then follow the Action Plan.⁵⁰⁷ While this is an improvement compared to the previous threshold, which was set at over 300 employees,⁵⁰⁸ it still represents a limitation to the law's applicability. In practice in fact, it still excludes all the small enterprises and some of the medium-sized businesses which represent the vast majority of Japan's economy.⁵⁰⁹ Thus, while the Act tries to promote women's participation in professional life, its reliance on employers' discretion and its limited scope substantially constrain its overall effectiveness.

Lack of mandatory standards and sanctions

Lastly, the non-binding nature of the law is further reinforced by the lack of concrete standards to be achieved and by the lack of sanctions. While the original aim of the Act was to increase the proportion of women in managerial position to 30% by 2020, the lack of minimum or mandatory standards within the Action Plan, contributed to this target not being met and, instead, being postponed to 2030.⁵¹⁰ At the same time, the lack of penalties for failing to meet established targets, weakens incentives for compliance, allowing employers to dismiss these goals without facing strong consequences.⁵¹¹ On the other hand, under Article 24(1), the Act gives favourable treatment in public procurements to those employers who demonstrate "favourable conditions for women's active engagement in professional life or have implemented favourable initiatives for the promotion of women's active engagement in professional life."⁵¹² However, as discussed in Section 2.5.1 and similarly to the EEOL, the enforcement mechanisms of the Act rely mostly on reputational pressure.⁵¹³ As a result, compliance with the law risks to become optional and to be perceived more

⁵⁰⁶ *Ibid.*

⁵⁰⁷ WAPA, Art. 8(1).

⁵⁰⁸ The change came into effect in April 2022.

⁵⁰⁹ As of 2023, large corporations in Japan only account for 0.3% of all businesses. See J. Kumamoto-Healey, "Women in the Japanese labour market," p. 3.

⁵¹⁰ *Ibid.*

⁵¹¹ The only type of penalty prescribed in the Act is defined under Art. 39 and it provides that "any person who fails to make a report or makes a false report [...] is subject to a fine of not more than 200,000 yen." This is however limited to employers with more than 300 employees. See WAPA, Art. 39.

⁵¹² WAPA, Art. 20(1).

⁵¹³ *Ibid.*, Art. 9 and 10(1).

as a means for companies to obtain benefits or enhance their public image, rather than a genuine instrument for improving women's condition in the workplace.

3.4 Structural Barriers Embedded in Tax and Social Policies

3.4.1 Marital Deduction Law

Another factor behind the slow implementation of gender equality in the workplace, is the interaction of the structurally limited domestic legal framework previously discussed, with tax policies that directly hinder the implementation of gender equality. One of such tax policies is the Marital Deduction Law, also known as Spousal Deduction Law,⁵¹⁴ created in 1961 at the height of the Japanese economic growth period. This tax system provided for “income tax deductions to main income earners for their spousal dependents.”⁵¹⁵ In other words, this was a system that allowed for tax reductions on labour income when the combined total earnings of the taxpayer and their dependent spouse (the dependant), who had to share the same household, was below a specified threshold. At the time of its implementation, the policy reflected prevailing social norms in which men were still widely regarded as the primary breadwinners, and therefore the main income earners, while women, as dependent spouses, were expected to remain at home taking care of the children and the elderly family members.⁵¹⁶ As such, it was economically convenient for family units to benefit from reduced taxation on a single income meant to support the entire family. Yet, this system quickly led to negative consequences for the achievement of gender equality in the workplace as it effectively disincentivised women from participating in professional life.

Normative framework of the Marital Deduction Law

The Japanese taxation system on labour income works under the progressive, or “ability to pay,” principle, in which higher incomes are subjected to higher tax rates. In this context, earnings below 1.03 million yen⁵¹⁷ are considered non-taxable while earnings above this threshold are taxed at progressively increasing marginal rates ranging from 5% to 45%.⁵¹⁸ Within this framework, and as explained previously, the Marital Deduction Law allowed main income earners with a dependent

⁵¹⁴ In Japanese it's *haigūsha kōjo*, which literally translates to “tax exemption for one's spouse.”

⁵¹⁵ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 161.

⁵¹⁶ R. Yasuda, “配偶者控除廃止はいつから？ 2025 年の制度改正と 103 万円の壁の変更点を解説,” (When will the spousal deduction be abolished? Explaining the changes to the 2025 system a million-yen threshold), *Freee*, 2025. Available at: <https://www.freee.co.jp/kb/kb-payroll/spousal-exemptions-abolished/>

⁵¹⁷ Roughly the equivalent of €5.500 as of April 2026.

⁵¹⁸ S. Kitao and M. Mikoshiba, “Why Women Work the Way They Do in Japan: Roles of Fiscal Policies,” *Centre for Applied Macroeconomic Analysis*, The Australian National University, 2022, p. 11.

spouse to benefit from tax deductions if the wife earned less than 1.03 million yen annually.⁵¹⁹ Then, with the increased need for women's participation in the work force, in 1986 the Japanese government introduced the Special Marital Deduction Law. This new law, while maintaining the provisions of the Marital Deduction Law, also provided for progressive tax deductions for dependant spouses earning between 1.03 and 1.41 million yen⁵²⁰ so that they could still benefit from this system while earning more money.⁵²¹ The upper limit of the Special Marital Deduction Law was once again raised between 2017 and 2018 enabling eligibility for dependants earning up to 1.5 million yen⁵²² per year.⁵²³ Furthermore, as of 2025, the maximum deductible tax amount has remained stable at 380,000 yen.⁵²⁴

However, since its inception, the system was designed so that increases in the dependant's income⁵²⁵ would correspond to a gradual reduction in the available deductible amount, eventually resulting in a complete return to regular taxation once certain thresholds were exceeded. Furthermore, and in addition to the loss of tax benefits, surpassing these cutoff ceilings could also lead to the loss of other benefits, such as the wife's eligibility to the husband's social security and health insurance coverage.⁵²⁶ Under this social insurance system in fact, wives were covered under their husband's social security plan as long as they continued to earn less than 1.3 million yen annually.⁵²⁷ Above this threshold on the other hand, the wife would be required to independently enrol in the social security system and begin paying premiums.⁵²⁸

Issues resulting from the Law

The Marital Deduction Law, while economically advantageous at the time of its first implementation, has therefore strongly disincentivised married women in particular from participating in professional life. This Law is in fact structured in a way that leads married women and their household to gain significantly more, on an economic level, from keeping their earnings

⁵¹⁹ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 161.

⁵²⁰ Roughly the equivalent of €7.500 as of April 2026.

⁵²¹ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 161.

⁵²² Roughly the equivalent of €8.000 as of April 2026.

⁵²³ S. Kitao and M. Mikoshiba, "Why Women Work the Way They Do in Japan," p. 11 and R. Yasuda, "配偶者控除廃止はいつから？".

⁵²⁴ R. Yasuda, "配偶者控除廃止はいつから？". Also, this amount has remained unchanged since 2004. See S. Kitao and M. Mikoshiba, "Why Women Work the Way They Do in Japan," p. 11.

⁵²⁵ As of 2025 the maximum amount that the dependant could earn annually has been set at 2.01 million yen, which is roughly equivalent to €10.767 as of April 2026.

⁵²⁶ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 161.

⁵²⁷ S. Kitao and M. Mikoshiba, "Why Women Work the Way They Do in Japan," p. 10.

⁵²⁸ S. Takahashi, "A Structural Estimation of the Effects of Spousal Tax Deduction and Social Security Systems on the Labor Supply of Japanese Married Women," International University of Japan, 2010, p. 1.

below the previously mentioned cutoff ceiling as to avoid incurring in higher taxes. To this first incentive should be added the traditional gender role expectation that daughters-in-law would be the ones sacrificing their professional life to take care of children, family members and spouses as discussed by Professor Ikeda and as previously mentioned in Section 2.4.1.⁵²⁹ Together, these two factors naturally lead married women to either seek non-regular and low wage jobs or renounce employment altogether.⁵³⁰ As also mentioned by Kitao and Mikoshiba in their analysis in fact, empirical studies have demonstrated that “many women intentionally control their labour supply” to avoid hitting cutoff numbers.⁵³¹

In practice, this system has produced multiple negative outcomes for women. Firstly, as also highlighted by the CEDAW Committee in its 2016 and 2024 Concluding Observations, this system has contributed to the perpetuation of gender division in employment. While men continue to occupy regular, well-paying jobs in fact, women are channelled towards part-time employment under the conviction that this arrangement will allow them to better balance family responsibilities whilst avoiding the thresholds for higher taxes.⁵³² Furthermore, this professional segregation can have further repercussions on pension benefits for women, which in turn could lead to post-retirement poverty.⁵³³ Lastly, this law has contributed to the deregulation of the labour market which has resulted in an increase in part-time employment setting particularly affecting women,⁵³⁴ which will be discussed more in depth in Section 4.3.2. As such, these outcomes of the Marital Deduction Law have given opposites results to what is the aim of the Equal Employment Opportunity Law,⁵³⁵ and have contributed to the slow progress in the complete implementation of gender equality in the workplace.

⁵²⁹ S. Ikeda, “Family Care Leave and Job Quitting,” p. 28.

⁵³⁰ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 162.

⁵³¹ S. Kitao and M. Mikoshiba, “Why Women Work the Way They Do in Japan,” p. 12 and N. Nagase, “Much to be done in Japan’s family and gender equality policies,” *Asia Pacific Business Review*, 2024, p. 10.

⁵³² CEDAW Committee 2016, para. 34(b)(c) and CEDAW Committee 2024, para. 39(b)(c).

⁵³³ *Ibid.*

⁵³⁴ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 161. See also CEDAW Committee 2016 and 2024.

⁵³⁵ *Ibid.*, p. 161.

4. Consequences in Japanese Society

4.1 Introduction

If Chapter 1 and 2 of this thesis have demonstrated that steps have been taken at both international and domestic level for the promotion of women's participation in the workforce, and therefore gender equality in employment, Chapter 3 has shown that Japan's formal legal commitments do not necessarily translate to practical compliance. Indeed, as also argued by Doctor Marikkar, the existence of equality laws has yet to fully translate into equal opportunity of outcome for women.⁵³⁶ Indeed, there seem to be a general sense of dissatisfaction with the limited changes resulting from the soft law approach Japan took with international legislations and from the lack of sanctions in its domestic laws on gender equality. According to a 2020 survey co-led by Focus 2030 and Women Deliver in fact, 78% of respondents from Japan declared that they "think that the Japanese government 'should do more' to promote gender equality."⁵³⁷

Thus, while Japan's ratification of international conventions on gender equality and the following adoption of domestic legislations, aimed at improving the situation of working women, have led to some progress in gender equality practices across various areas of employment, from recruitment and hiring to illegal dismissals on the grounds of marriage and pregnancy, Japan has yet to fully commit to the principles enshrined in these international conventions.⁵³⁸ It has also yet to adopt reforms able to address and fundamentally challenge the entrenched patriarchal norms that continue to dictate the organisation of Japanese society in general and of Japanese employment in particular.⁵³⁹ As such, practices like the dual-track career system and the persistence of the spousal deduction tax, previously examined, were able to emerge and endure despite the existence of domestic and international gender equality legislations, effectively circumventing their intended objectives.

In this sense, and as argued by Eweje *et Al.*, "Japan exhibits stable decoupling," meaning that it allows formal legal commitments to women's promotion and overall gender equality in employment, to coexist with practices that protect the traditional work culture of the "male *salaryman*" and the

⁵³⁶ F. A. Marikkar, "The Role of Gender Equality in the Workplace in Japan," 国際経営論集, No. 33, 2007, p. 94.

⁵³⁷ "Japan Country Data Sheet," Focus 2030 and Women Deliver, 2020, p. 2.

⁵³⁸ Y. Zhang-Zhang, "Gendered workplace as a double-loop social construct: the case of Japanese women professionals," Emerald Publishing Limited, 2024, pp. 4-6.

⁵³⁹ N. Nagase, "Much to be done in Japan's family and gender equality policies," p. 3, J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 174 and K. Nemoto, "Long Working Hours and the Corporate Gender Divide in Japan," *Gender, Work and Organization*, Vol. 20, No. 5, 2013, p. 516.

female “*shufu*” (housewife).⁵⁴⁰ In this context, institutional inertia and symbolic compliance reoccur, as achieving substantive gender equality in employment would require completely reforming the system underpinning Japan’s economic structure.⁵⁴¹ More specifically, it would require challenging a work culture based on long hours, life-time employment and seniority-based wages, all of which have historically relied on the assumption that women would provide unpaid caregiving and domestic labour within the household.⁵⁴²

In practice, this system has therefore led to very little change and slower policy reforms.⁵⁴³ For instance, Japan’s position in the Global Gender Gap has continued to decrease in ranking since the Index first publication in 2006, demonstrating Japan’s lack of substantive progress and the persistence of structural inequalities in the Japanese employment system.⁵⁴⁴ For women, this has also translated into a continuously hindered participation in the workforce. Indeed, even ambitious policy reform plans, like the Abe’s “*Womenomics*,” ultimately relied on the assumption that women would continue to balance work and family responsibilities. Thus, rather than redistributing domestic labour more equally between men and women or expanding external support systems, Japan’s strategy encouraged women to enter the labour market while still maintaining near-total responsibility for family care.⁵⁴⁵ As a result, and as will be discussed in the following sections, many women have experienced the double burden of paid and unpaid labour, which has often led them to either completely quit their jobs after marriage and childbirth or start relying on non-regular forms of employment and therefore limiting both their career progression and their long term economic independence.

As such, Chapter 4 will focus on the consequences that this approach has had on Japanese society. Therefore, Section 4.2 will focus on the work culture and its intrinsic gender norms and the ways in which this structure has remained largely unchanged since its first development despite the introduction of gender equality legislations. Then, Section 4.3 will analyse how persistent gender inequalities manifest in practice within the labour market. In particular, this section will focus first on the persistent occupational segregation of women and their channelling into non-regular employment, before examining how these two factors affect women’s income thus contributing to the widening of

⁵⁴⁰ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, “Gender equality discourse: a Japanese context,” p. 261 and M. Crawford, “Abe’s Womenomics Policy, 2013-2020: Tokenism, Gradualism, or Failed Strategy?”, *The Asia-Pacific Journal*, Vol. 19, No. 4, 2021, pp. 3-4.

⁵⁴¹ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, “Gender equality discourse: a Japanese context,” p. 261.

⁵⁴² CESCR 2013, para. 13 and J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, pp. 170-173.

⁵⁴³ Y. Zhang-Zhang, “Gendered workplace as a double-loop social construct,” p. 5.

⁵⁴⁴ Japan’s ranking in the Global Gender Gap Report by the World Economic Forum has dropped from 80th place in 2006 to 118th in 2025.

⁵⁴⁵ A. Iida, “How Do Women “Shine?””, p. 2.

the gender wage gap. Following, Section 4.4 will discuss how the lack of a work-life balance and general gender inequalities in employment have led to demographic consequences with women actively delaying marriage and childbearing due to unequal burden of care, thus heavily contributing to Japan's fertility crisis. Lastly, Section 4.5 will look more broadly at Japan's economic situation and how gender inequality in the labour market has negatively impacted the national economy, thus potentially harming the legitimacy and credibility of international and national legal frameworks on gender equality, which will be the focus of Section 4.6.

4.2 Work Culture and Gender Norms

The gap between Japan's formal legal commitments and their practical enforcement, has resulted in very few changes to the Japanese work culture and the gender norms that underpin it. This has led the CEDAW Committee, in its 2024 Concluding Observations, to express its concerns regarding

The persistence of patriarchal attitudes and deep-rooted gender stereotypes about the roles and responsibilities of women and men in the family and in society, including in education, employment and public life.⁵⁴⁶

While gender equality has been formally recognised in Japan and even enshrined in Article 14 of the Constitution in fact, its practical implementation remains limited and progress has remained slow, while societal expectations of traditional gender roles have continued to influence everyday practices.⁵⁴⁷ As a result, Japan's work culture, historically structured on the belief that men should prioritise paid work while women should take care of the household, has yet to be fundamentally challenged.⁵⁴⁸

4.2.1 Past and Present Work Culture in Japan

Historical context

The current Japanese style of employment, based on the model of the male "breadwinner" and the female family caretaker, originated in the postwar period in order to support rapid economic growth.⁵⁴⁹ This model in fact, commonly associated with the figure of the *salaryman* in Japan, enabled men to fully devote themselves to the standard Japanese employment practice of "lifetime employment," characterised by long-term contracts, long working hours resulting in frequent

⁵⁴⁶ CEDAW Committee 2024, para. 25(a).

⁵⁴⁷ CESCR 2013, para. 13.

⁵⁴⁸ Y. Zhang-Zhang, "Gendered workplace as a double-loop social construct," pp. 6-8.

⁵⁴⁹ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 170 and F. A. Marikkar, "The Role of Gender Equality in the Workplace in Japan," p. 91.

overtime, and the expectation of complete loyalty and availability to the company.⁵⁵⁰ In return, employees would be rewarded with job stability and seniority-based wage increases while employers benefited from a stable and committed workforce. This system would however leave men with little to no time to participate in childcare or household responsibilities, thus placing the burden of domestic labour completely on women.⁵⁵¹ By the 1960s, Japan began to experience issues with labour shortages, leading to an increased need for female workers to participate in employment in order to sustain economic growth.⁵⁵² Yet, as discussed by Aki Iida, while women were encouraged to enter the workforce, they were not relieved of their caregiving responsibilities.⁵⁵³ As a result, women were channelled into non-regular forms of employment, which offered more flexibility and allowed them to balance paid work with domestic responsibilities, while also “protecting” them from some of the demands of lifetime employment such as relocation and excessive overtime. Thus, this system simultaneously positioned women as both sources of inexpensive labour and “nurturers of human capital” within the household.⁵⁵⁴

Current work culture in Japan

This Japanese style employment practice is still in place today. Despite Japan’s ratification of the ILO Convention No. 156 on the promotion of the reconciliation of work and family responsibilities in fact, the Japanese corporate culture continues to operate on the expectation that employees demonstrate complete availability, loyalty and long-term commitment to their employer.⁵⁵⁵ Workers are therefore expected to be recruited immediately after graduation and to undergo extensive in-house training, accept frequent job rotations and relocations and commit themselves to long working hours, overtime and uninterrupted years of service under the same company in order to gain seniority and access all employment benefits coming with it.⁵⁵⁶ Within this system, the “ideal worker” becomes someone free from caregiving responsibilities and therefore able to prioritise the needs of the company above all else.⁵⁵⁷ As a result, and despite of the adoption of gender equality laws, men

⁵⁵⁰ M. Crawford, “Abe’s Womenomics Policy, 2013-2020,” p. 3.

⁵⁵¹ N. Nagase and M. C. Brinton, “The gender division of labour and second births: Labor market institutions and fertility in Japan,” *Demographic Research*, Vol. 36, 2017, p. 346.

⁵⁵² J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 170.

⁵⁵³ A. Iida, “How Do Women “Shine?””, p. 2.

⁵⁵⁴ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 170.

⁵⁵⁵ K. Nemoto, “Long Working Hours and the Corporate Gender Divide in Japan,” p. 512 and G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, “Gender equality discourse: a Japanese context,” p. 270.

⁵⁵⁶ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 173.

⁵⁵⁷ M. Crawford, “Abe’s Womenomics Policy, 2013-2020,” p. 2.

continue to be positioned as the full-time breadwinners of the household, while women continued to be assigned with caregiving responsibilities.⁵⁵⁸

As such, the persistence of this employment structure continues to produce significant disadvantages for women. Even if domestic legislations such as the EEOL and the Women's Advancement Promotion Act have formally expanded women's access to employment, their lack of strong enforcement structures and punitive sanctions have been unable to challenge the underlying assumptions upon which the Japanese workplace is organised. Because career advancement and job security are still strongly tied with uninterrupted employment, long working hours and complete availability to the company, "women are rarely found in career-track jobs," as balancing work and family responsibilities can become difficult under these requirements.⁵⁵⁹ Therefore, in practice, women are often perceived by employers as "unreliable long-term investments" due to the expectation that they will eventually leave work, or at least reduce their working hours after marriage, in order to take care of the household and children.⁵⁶⁰ As a result, many women in Japan are channelled into non-regular part-time and often low wage jobs as well as clerical roles easily dismissible and which require lower investments from companies.⁵⁶¹ This system is also further reinforced by tax policies such as the Marital Deduction Law, which, as previously mentioned, incentivise women to remain financially dependent on their husbands and therefore to accept these non-regular positions, thus not only reinforcing the legitimacy of this employment system but also the social inequalities that it generates.

4.2.2 Social Expectations and Internalised Roles

Despite the increase of female participation in the labour market,⁵⁶² particularly in recent years, social expectations continue to assign primary domestic responsibilities to women, thus leading many to internalise traditional gender roles.⁵⁶³ As will be discussed more in depth in Section 4.4.2 in fact, while Japanese society has seemed to welcome the promotion of women's participation in employment, the expectation that women will continue to bear primary responsibility for child and household care remains. Furthermore, Japanese men record the lowest levels of participation in

⁵⁵⁸ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, "Gender equality discourse: a Japanese context," p. 270.

⁵⁵⁹ N. Nagase and M. C. Brinton, "The gender division of labour and second births," p. 347.

⁵⁶⁰ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 170 and G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, "Gender equality discourse: a Japanese context," p. 261.

⁵⁶¹ N. Nagase and M. C. Brinton, "The gender division of labour and second births," p. 347.

⁵⁶² World Economic Forum, *Global Gender Gap Report*, p. 39.

⁵⁶³ According to a 2016 survey conducted by the Cabinet Office of Japan concerning the promotion of women, 40.6% of respondents agreed with the statement that "Husbands must work outside, and wives must stay at home." See A. Iida, "Gender inequality in Japan," p. 46.

household matters and domestic labour among all G7 countries and also lower than the OECD average. As a result, regardless of whether women are full-time housewives or full-time employees, and therefore even within a dual-income households, women are still expected to undertake the majority, if not the entirety, of housework.⁵⁶⁴

As such, the Japanese employment structure forces women to choose between a career-oriented path or a family-oriented one, the latter often requiring them to either withdraw from the workforce entirely or at least reduce their professional involvement.⁵⁶⁵ At the same time, the assumption that women will inevitably prioritise household and family responsibilities, combined with employers' tendency to regard men as more stable and reliable workers, further pushes women to believe that their role is indeed limited to domestic matters.⁵⁶⁶ As a result, these expectations not only shape employer's hiring and promotion practices, but also women's own career aspirations and long-term employment decisions.⁵⁶⁷ This dynamic also commonly results in women leaving employment upon marriage and childbirth, in a labour participation pattern known as the "M-Curve."⁵⁶⁸ This term is commonly used to describe the tendency for women's labour force participation to decline during the childrearing years, between the late 20s and early 40s, before increasing again later in life, often through part-time or non-regular employment.⁵⁶⁹ Indeed, according to a 2021 survey led by the Japanese Ministry of Health, Labour and Welfare, while approximately 90% of unmarried women aged 25 to 44 were employed, labour force participation decreased to roughly 70% among married women.⁵⁷⁰ As such, this pattern demonstrates how social expectation and internalised gender roles still shape women's economic participation.

4.2.3 Maternity Harassment

Women's tendency to leave the workforce upon pregnancy and childbirth, is also influenced by cases of maternity harassment. As argued by professor Nemoto in fact, "a woman who wishes to combine her caretaker role with her work may face a 'motherhood penalty' or negative stereotyping for being less than competent and committed to paid work," often also resulting in the end of her career.⁵⁷¹ In a high-performance working culture like that of Japan, employers may end up seeing

⁵⁶⁴ A. Iida, "Gender inequality in Japan," pp. 46-47.

⁵⁶⁵ K. Nemoto, "Long Working Hours and the Corporate Gender Divide in Japan," p. 514.

⁵⁶⁶ M. Takahashi, "The Issues of Gender in Contemporary Japanese Working Life: A Japanese 'Vicious Circle'" *Feminist Issues*, Vol. 14, No. 1, 1994, p. 41-42.

⁵⁶⁷ K. Nemoto, "Long Working Hours and the Corporate Gender Divide in Japan," p. 515.

⁵⁶⁸ A. Iida, "How Do Women 'Shine?'," p. 4.

⁵⁶⁹ Y. Zhang-Zhang, "Gendered workplace as a double-loop social construct," p. 6.

⁵⁷⁰ A. Iida, "How Do Women 'Shine?'," p. 4.

⁵⁷¹ K. Nemoto, "Long Working Hours and the Corporate Gender Divide in Japan," p. 514.

pregnancy and maternity leave as a “drag on a company’s work,” particularly because a woman’s temporary reduction in availability, and potentially productivity, may lead to increases in the workload of other employees.⁵⁷² As a result, employers may end up pressuring and harassing pregnant women until they eventually resign of their own volition. This is a phenomenon against which even the Equal Employment Opportunity Law often struggles to provide effective protection, as proving workplace hostility or indirect discrimination, especially in court, can be extremely difficult if such behaviour is not properly documented.⁵⁷³

This practice of harassing pregnant women until they eventually leave their job has become commonly known in Japan as “*matahara*.” Derived from the fusion of the English words “maternity” and “harassment,” this term refers to the

Unfair treatment of women, namely harassment, both physical and mental, instilled upon working women when they become pregnant or give birth, which may involve termination of their employment, termination of their contract of employment, or forcing them to voluntarily leave their employment.⁵⁷⁴

In practice therefore, maternity harassment can manifest in a variety of ways. Some women experience such treatment even before taking maternity leave, as in the case of Sayaka Osakabe, founder of the Japanese nonprofit organisation Matahara Net which supports victims of workplace harassment related to pregnancy and childbirth.⁵⁷⁵ In her case, her employer imposed such excessive workload on her shoulders to the point where the stressful work environment, combined with the long working hours, contributed to her suffering two miscarriages. In other, less overtly violent cases, women may instead be gradually marginalised within their workplace by being excluded from important duties, demoted or having their contracts changed without their knowledge upon returning from maternity leave.⁵⁷⁶

While there are legislations, such as the EEOL and the Labour Standard Act, aimed at protecting women from these practices, they are not always implemented as intended and often weaponised. For instance, while the Labour Standard Act requires employers to provide pregnant women with lighter workload upon request,⁵⁷⁷ employers may use such accommodations to justify sidelining women

⁵⁷² M. Bielski, “*Matahara*: An Issue with a Larger Context,” *Diplomatic Courier*, 2015. Available at: <https://www.diplomaticcourier.com/posts/matahara-an-issue-with-a-larger-context>

⁵⁷³ See M. Starich, “The 2006 Revisions,” pp. 568-570 in Section 3.3.1.

⁵⁷⁴ “What is ‘*Matahara*’,” *Mataharanet*. Available at: <https://mataharanet.org/en/what-is-matahara/>

⁵⁷⁵ M. Bielski, “*Matahara*: An Issue with a Larger Context.”

⁵⁷⁶ K. Ryan, “Maternity Harassment in Japan,” *The Diplomat*, 2015. Available at: [Maternity Harassment in Japan – The Diplomat](https://thediplomat.com/2015/07/21/maternity-harassment-in-japan/)

⁵⁷⁷ Ministry of Health, Labour and Welfare, *Translation of the Labour Standard Act*, Act No. 49, 1947 in “Japanese Law Translations,” 2018, Art. 65(3). Available at: <https://www.japaneselawtranslation.go.jp/en/laws/view/3567/en>

from career advancement opportunities and fazing them out of their roles.⁵⁷⁸ These actions, combined with comments by employers accusing women of causing “inconvenience” to the company and other employees by taking maternity leave, or suggesting that they are “selfish” and “bad mothers” for wishing to continue their careers after childbirth, have pushed many women to resign from employment altogether.⁵⁷⁹ Thus, as also argued by Madeline Bielski, the existence of formal legislations prohibiting gender discrimination in the workplace and their practical enforcement are two very different things,⁵⁸⁰ and as already discussed in Chapter 3, Japanese courts do not have a strong track record of enforcing such equality legislations and sanctioning those violating their provisions.

4.3 Persistent Gender Inequalities in the Labour Market

Despite Japan’s formal commitment to gender equality through both international and domestic legislations, gender inequalities continue to characterise the labour market. Thus, these inequalities can be closely linked to a combination of limited enforcement of gender equality legislations as well as their limited effect in challenging employment practices that continue to prioritise the male breadwinner model. In particular, the previously examined corporate structure rewarding long working hours and complete loyalty to the company, remains difficult to reconcile with the social expectation that women should also bear primary responsibility for their family care and domestic labour.⁵⁸¹ As a result, women continue to experience occupational segregation and disproportionate concentration in non-regular employment, both also contributing to the persistence of a wide gender wage gap. At the same time, tax policies such as the Marital Deduction Law further reinforce this structure by incentivising married women to limit their earning and remain financially dependent on their husbands. Thus, the Japanese labour market continues to demonstrate how the inefficient enforcement of gender equality legislations enables traditional gender norms to continue producing economic gender inequalities.

4.3.1 Occupational Segregation

One consequence of the limited practical implementation and enforcement of international and national legislations on the promotion of gender equality in employment, is the perpetuation of discriminatory practices such as the occupational segregation of women. As introduced in Section 1.2.2, occupational gender segregation refers to the phenomenon in which women, even when well-

⁵⁷⁸ M. Bielski, “*Matahara: An Issue with a Larger Context.*”

⁵⁷⁹ K. Ryan, “Maternity Harassment in Japan.”

⁵⁸⁰ M. Bielski, “*Matahara: An Issue with a Larger Context.*”

⁵⁸¹ N. Nagase, “Much to be done in Japan’s family and gender equality policies,” pp. 6-7.

educated and despite increasing levels of labour market participation, remain concentrated in lower hierarchical positions and in occupations traditionally perceived as “female.”⁵⁸² More specifically, in Japan’s male-centred employment structure, women commonly experience both vertical and horizontal occupational segregation, with the former referring to the underrepresentation of women in managerial positions and the latter concerning the concentration of women in clerical and non-regular forms of employment.⁵⁸³ As examined in both Section 3.2.2 and Section 3.2.3, in Japan, occupational segregation has repeatedly been identified as a matter of concern by both the CESCR and the CEDAW Committee. In their concluding observations in fact, both Committees have criticised the persistence of structural inequalities and the continued concentration of women in precarious and low-income positions.⁵⁸⁴ As such, their observations demonstrate how, despite the rights formally guaranteed at both international and domestic level, Japan continues to struggle with their practical enforcement in the workplace.

Occupational segregation is therefore the result of both the cultural expectations surrounding the stereotypical role of women and the limited enforcement of domestic equality legislations like the Women’s Advancement Promotion Act. On one hand, persistent gender norms continue to limit women’s access to careers and positions traditionally considered unsuitable for them. In this context, and as discussed by Zhang-Zhang, vertical gender segregation continues to operate as a “cost-saving measure” for many Japanese companies as the employment structure based on seniority-based promotions and wage increases, long working hours and relocations is assumed to be incompatible with the expectation that women should simultaneously balance employment and family responsibilities. These expectations combined with the absence of female leaders able to challenge such assumptions, have contributed to the perception among employers that investing in women and promoting them into managerial position would be economically disadvantageous, as women are expected to eventually resign following marriage and childbirth.⁵⁸⁵ The persistence of this phenomenon is further illustrated by the Japanese government’s goal of achieving 30% of female representation in managerial positions by 2020 through the WAPA, a target that eventually had to be postponed to 2030 due limited scope of applicability of the law and the general failure in meeting the original benchmark.⁵⁸⁶

⁵⁸² Y. Zhang-Zhang, “Gendered workplace as a double-loop social construct,” p. 11.

⁵⁸³ G. S. Mahantesh and R. Mamatha, “Gender Discrimination in the Workplace,” pp. 1148-1150 and J. Prakash, S. Dhamija, S. Chaudhury, K. Srivastava, “Women and the workplace,” pp. 202-203.

⁵⁸⁴ CEDAW Committee 2009, para. 45, CEDAW Committee 2016, para. 34 and CESCR 2013, para. 13.

⁵⁸⁵ Y. Zhang-Zhang, “Gendered workplace as a double-loop social construct,” pp. 11-12.

⁵⁸⁶ A. Iida, “How Do Women “Shine?”, p. 3 and J. Kumamoto-Healey, “Women in the Japanese labour market,” p. 3.

On the other hand, the weak enforcement of domestic legislations such as the Equal Employment Opportunity Law enables companies to institutionalise a horizontal segregation of labour. As discussed in Section 3.3.1 and as also argued by Stephanie Assmann, due to the EEOL being often perceived more as a guideline than a binding legal instrument,⁵⁸⁷ Japanese companies are able to circumvent its provisions by establishing the dual-career employment system. Consequently, even after the 2006 revision of the law, which strengthened the Law's provisions on indirect discrimination, women continue to be channelled into clerical positions, characterised by routine administrative work and lower wages, while men continue to occupy the managerial career track associated with promotions and long-term career development.⁵⁸⁸

4.3.2 Non-Regular Employment

Closely connected with the phenomenon of horizontal occupational segregation, discussed in the previous section, is the disproportionate concentration of women in non-regular employment. In Japan, the increase in number of non-regular employment setting can be largely attributed to the deregulation of the labour market. This phenomenon has been progressing since the 1990s, beginning in the aftermath of the economic bubble collapse. During the period of economic stagnation that followed, the increase in deregulatory policies⁵⁸⁹ led firms to progressively rely on non-regular contracts to maintain labour flexibility and reduce costs.⁵⁹⁰ As a result, Japan, which was already known for its dualistic labour market system composed of regular (*Seiki Shain*) and non-regular employees (*Hiseiki Shain*),⁵⁹¹ experienced an increase in availability of non-regular and part-time employment.⁵⁹² In this context, once again, the limited enforcement of equality measures enshrined in international legislations such as the ICESCR and the CEDAW, along with the minimal binding obligations and lack of sanction imposed on employers by national legislations such as the EEOL, contributed to the perpetuation of gender inequality in employment.⁵⁹³ In particular, these legislations proved to be insufficient to challenge and overpower the deeply rooted societal norms that prioritised

⁵⁸⁷ M. Crawford, "Abe's Womenomics Policy, 2013-2020," p. 5.

⁵⁸⁸ See "The dual-track career system" in Section 3.3.1.

⁵⁸⁹ The Part-Time Employment Act and the Labor Dispatch Law in particular contributed to the deregulation of the Japanese labour market.

⁵⁹⁰ M. Crawford, "Abe's Womenomics Policy, 2013-2020," p. 5 and S. Maslow and S. Assmann, "Dispatched and Displaced: Rethinking Employment and Welfare Protection in Japan – 派遣・追放—日本の雇用と生活保護を再考する," Asia Pacific Journal, Vol. 8, No. 3, 2010. Available at: [Dispatched and Displaced: Rethinking Employment and Welfare Protection in Japan 派遣・追放—日本の雇用と生活保護を再考する - Asia-Pacific Journal: Japan Focus](#)

⁵⁹¹ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 163.

⁵⁹² S. Maslow and S. Assmann, "Dispatched and Displaced."

⁵⁹³ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, "Gender equality discourse: a Japanese context," pp. 271-273, and J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 163.

women's caregiving roles. Consequently, women were and continue to be disproportionately channelled into these non-regular, but more flexible contracts,⁵⁹⁴ which then enable them to continue fulfilling their family responsibilities. Indeed, as of 2016 women constituted 68.1% of all non-regular employees and only 31.5% of all regular employees.⁵⁹⁵ At the same time, tax policies such as the Marital Deduction Law, further encouraged married women to favour part-time work as a way to remain below the income thresholds for tax deduction.⁵⁹⁶ As a result, while the labour market deregulation technically increased the overall number of work opportunities, the Japanese legislative and policy systems ensured that women became overrepresented in non-regular and low-income employment. As such, this dynamic ended up reinforcing gender inequalities confining women to precarious employment and limiting their access to more stable career choices and economic independence.

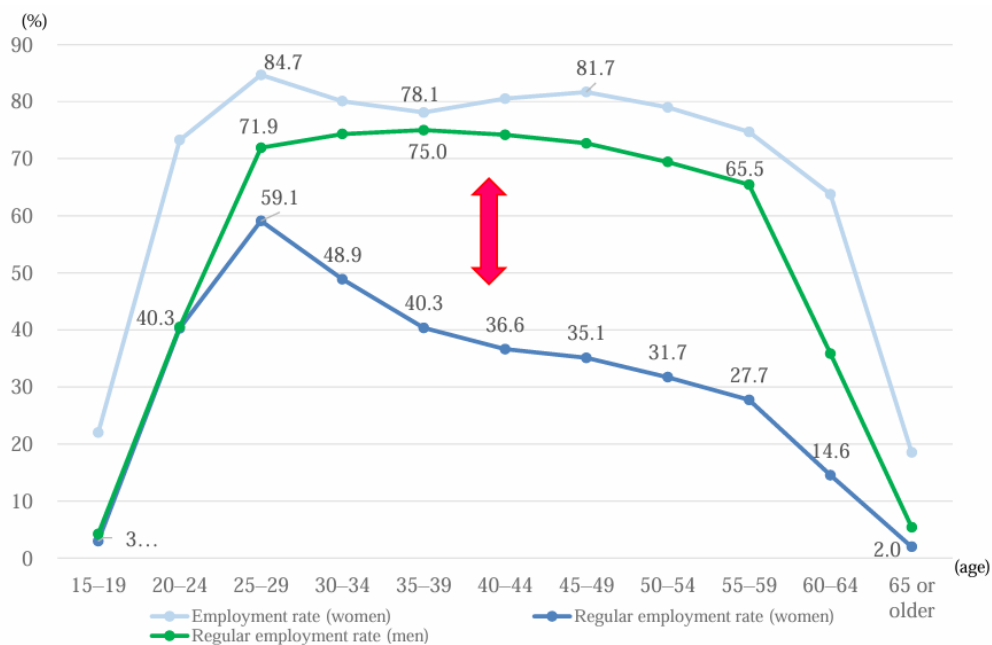


Figure 1. L-Shaped Curve (2023), based on the employment rates of men and women in Japan. Source: *Current Status and Challenges of Gender Equality in Japan*, Gender Equality Bureau Cabinet Office, Government of Japan, 2024.

Labour market deregulation therefore, has had a gendered impact on society. A closer look at the data in fact, shows that the proportion of women in non-regular employment has been gradually increasing from 37.9% in 1999 to 51% in 2003, then to 53.6% in 2009 and up to 54.4% in 2012.⁵⁹⁷ More recent evidence from a 2024 study by the Japanese Gender Equality Bureau demonstrates that

⁵⁹⁴ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, "Gender equality discourse: a Japanese context," p. 273.

⁵⁹⁵ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 173.

⁵⁹⁶ See Section 3.4.1.

⁵⁹⁷ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 163 and S. Maslow and S. Assmann, "Dispatched and Displaced."

this trend has slightly improved, but women still tend to be channelled into non-regular employment over the course of their working lives. As illustrated in the graph in Figure 1, women aged 25 to 29 represent an exception, with only 25.6% in non-regular employment, compared to the 59.1% in regular positions. However, this proportion gradually shifts with age, as women are believed to leave regular, full-time roles due to marriage and childbirth and then resume working in non-regular positions after the child-rearing years. As such, by the 35 to 39 age range, the proportion of women in regular (40.3%) and non-regular (37.8%) employment is almost equal, before fully reversing in the 45 to 49 age group where only 35.1% of women remain in regular employment compared to 46.6% in non-regular roles.⁵⁹⁸ In contrast, men, who are not constricted by the same social expectations as women, consistently maintain high levels of participation not only in the labour market in general, but specifically in regular employment throughout their working lives. Among men aged 25-29, 71.9% are in regular employment, a figure which then peaks at 75% in the 35 to 39 age range and only gradually declines to 65.5% by ages 55 to 59, before decreasing more sharply as retirement age approaches.⁵⁹⁹ Ultimately, this study is useful to highlight how, despite the existence of formal international and national equality laws, their limited enforcement continues to result in the persistence of gender disparities in the Japanese labour market. As such, the “L-shaped curve” illustrated in Figure 1 demonstrates how the rate of women in regular employment starts to decline after their late twenties, demonstrating how women’s participation in regular employment varies over time and particularly in relation to life events such as marriage and childbirth.

The graph also reveals the extent of gender inequality in employment participation. The rate of men solely in regular employment is in fact almost equivalent to the rate of women participating in all forms of employment, both regular and non-regular. Indeed, in the 25-29 age range, the period in which women have their highest participation rate at 84.7% across all forms of employment, the proportion of men only in regular employment stands at 71.9%. Furthermore, in the 35-39 age group, this gap further narrows with women’s overall employment participation at 78.1% while the rate of men participating in regular employment alone raises to 75%.⁶⁰⁰ Although this study did not include the figures for men participation in non-regular and overall employment, nevertheless these comparisons highlight the unequal nature of Japanese women’s participation in employment.⁶⁰¹

⁵⁹⁸ The figures for women non-regular employment rates were obtained by subtracting the regular employment rates from the general employment rates of women. See, “Current Status and Challenges of Gender Equality in Japan,” Gender Equality Bureau Cabinet Office, Government of Japan, 2024, p. 13.

⁵⁹⁹ *Ibid.*

⁶⁰⁰ *Ibid.*

⁶⁰¹ It is reasonable to believe that if the figures for men’s participation rates in non-regular employment were present the gap between men and women overall participation in employment would be wider.

Furthermore, this study demonstrates how the limited enforcement of the existing equality legislations aimed at promoting gender equality in employment allows enduring social expectations surrounding caregiving to continue hinder women's equal participation in the workforce.

4.3.3 Gender Wage Gap

The combined effects of occupational segregation and women's concentration in non-regular employment have had further repercussions on women's income and long-term economic security. As noted by the CEDAW Committee in its 2024 Concluding Observations in fact, the gender wage gap in Japan remains wide, a situation partially attributable to both the persistence of occupational segregation practices as well as Japan's inadequate enforcement of the principle of "equal pay for work of equal value,"⁶⁰² enshrined into the ILO Convention No. 100.⁶⁰³ As such, Japanese women are directed into roles and forms of employment that would structurally result in lower earnings than regular employment, but are also paid less than their male counterparts even when occupying equal positions. Indeed, according to the 2022 Employment Status Survey compiled by the Statistic Bureau of Japan, among 29 million women participating in the workforce, approximately 14 million were employed as non-regular workers. Among these, two thirds, or around 9.3 million women, earned less than 1.5 million yen per year,⁶⁰⁴ which, as argued by professor Nagase, "is not enough to make one's own living." The remaining one third, while earning comparatively higher wages, still made less than 2.5 million yen annually,⁶⁰⁵ which once again is insufficient to support independent living. As such, many of these women continue to reside with their parents due to their limited economic autonomy.⁶⁰⁶

Thus, while data has shown that there has been an increase in the number of women participating in employment, whether regular or not, the gender wage gap in Japan has remained substantial and wider than in most OECD countries.⁶⁰⁷ As a result, these income inequalities can be observed not only among different types of employment, but can be found even among the same regular or non-regular roles. Indeed, according to the same study by the Gender Equality Bureau previously mentioned, men in regular employment earn up to 440.8 thousand yen per month by the end of their

⁶⁰² CEDAW Committee 2024, para. 39(a).

⁶⁰³ Article 2 of the ILO Convention No. 100 states that "Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value," a principle Japan has committed to uphold by ratifying the Convention.

⁶⁰⁴ Roughly the equivalent of €8,000 as of May 2026.

⁶⁰⁵ Roughly the equivalent of €13,500 as of May 2026.

⁶⁰⁶ N. Nagase, "Much to be done in Japan's family and gender equality policies," pp. 9-10.

⁶⁰⁷ Japan has a gender wage gap of 24.5%, which surpasses the OECD total by 13.5%. See Y. Zhang-Zhang, "Gendered workplace as a double-loop social construct," p. 10.

career while women in the same type of regular employment and same age group earn a maximum of 316.3 thousand yen per month. Similarly, men in non-regular employment can earn up to 285.1 thousand yen a month while women in the same roles can earn at most 210.5 thousand yen per month.⁶⁰⁸ Similar income discrepancies can also be observed between ever-married men and women. As analysed by professor Nagase, and according to the 2022 Employment Status Survey by the Japanese Statistics Bureau, while the gender wage gap between never-married individuals is relatively narrow, the same cannot be said for married men and women. Indeed, professor Nagase's analysis shows that 95% of ever-married men earns more than 2 million yen while only 53% of ever-married women earn the same amount as many participate in non-regular employment in order to take care of their family responsibilities. Furthermore, while majority of men earn between 3 to 10 million yen, the majority of married women earns between 0.5 and 4 million yen.⁶⁰⁹

These disparities therefore demonstrate how rooted gender stereotypes continue to hinder women's workforce participation and therefore their potential to earn income. Furthermore, the persistence of traditional gender norms, combined with occupational gender segregation practices and the concentration of women in non-regular employment limit women's access to career opportunities that would allow them to earn higher wages. At the same time, Japan's weak enforcement of the "equal pay for work of equal value" principle enables employers to continue paying women less than their male counterparts, which in turn discourages women from participating in employment altogether. Thus, Japan's limited enforcement of domestic and international gender equality legislations enables the perpetuation of disparities in employment opportunities, wages and long-term economic security between men and women.

4.4 Demographic Consequences

The perpetuation of traditional gender norms and the continued marginalisation of women within the workforce have led to serious demographic consequences for Japan. As discussed in previous sections, with men generally relegated to their role as the breadwinner, and thus expected to devote majority of their time to work, women have traditionally been assigned to children and household care. This gendered division of labour has not changed with the increased need, and therefore opportunities, for women to join the workforce. On the contrary, women have often been expected to perfectly balance both work and family responsibilities with limited help from their husbands and

⁶⁰⁸ "Current Status and Challenges of Gender Equality in Japan," p. 12.

⁶⁰⁹ N. Nagase, "Much to be done in Japan's family and gender equality policies," pp. 4-5.

little institutional support. As a result, women have often been sidelined to non-regular and low-income roles.⁶¹⁰

This economic precarity however, combined with the structural discrimination and workplace harassment faced by mothers examined in Sections 3.2.2 and 3.2.3, as well as the limited protections and support offered by domestic legislations, has been increasingly discouraging women from marriage and childbearing altogether. This, in turn, has contributed, especially among the younger generations, to the rejection of the “*Shufu*” model that had once encouraged larger families.⁶¹¹ Consequently, this system has led Japan to enter a long-lasting fertility crisis which has gradually evolved into broader socio-economic issues such as labour shortages and population decline which have further increased the need for women’s participation in the workforce. Yet, the persistence of labour practices that continue to assume women’s role as primary caregivers has created a structural paradox in which women are encouraged to enter the workforce while simultaneously remaining responsible for majority of unpaid domestic labour. As such, while this unequal distribution of caregiving responsibilities within the household continues to limit women’s career advancement and therefore undermines the achievement of substantive gender equality in the workplace while also having a negative effect on Japan’s demography.

4.4.1 Low Fertility and Delayed Motherhood

While declining fertility rates have become a widespread issue, especially among industrialised countries, in Japan this trend has increasingly developed into a socio-economic crisis able to threaten the country’s long term economic stability and national security.⁶¹² Japan’s birth rate has in fact been declining for almost three decades and,⁶¹³ as of 2024, the number of children a woman is expected to have during her lifetime has fallen to a new low of 1.15 births, compared to the 1.2 of 2023,⁶¹⁴ both of which are far below the replacement rate which as of 2022 was set at 2.07 children per woman.⁶¹⁵ In this context, the fact that the former Japanese Prime Minister Shigeru Ishiba identified the promotion of “more flexible work environments [...] that would help married couples to balance work and parenting” as one of his first priorities,⁶¹⁶ demonstrates the growing awareness concerning

⁶¹⁰ See Section 2.3.

⁶¹¹ M. Crawford, “Abe’s Womenomics Policy, 2013-2020,” p. 3.

⁶¹² “Japan’s annual births fall to record low as population emergency deepens,” *CNN World*, 2025. Available at: <https://edition.cnn.com/2025/06/05/asia/japan-birth-rate-record-low-intl-scli>

⁶¹³ K. Asao, D. Smirnov and T. Xu, “Japan’s Fertility: More Children Please,” *International Monetary Fund*, 2024, p. 2.

⁶¹⁴ “Japan’s annual births fall to record low.”

⁶¹⁵ H. Yoshida, M. Nishikitani, M. Okamoto, A. Kurokawa, M. Hoshina, M. Yazawa and N. Ichihara, “Career advancement and fertility intention among working women in Japan: a cross-sectional survey study,” *BMC Women’s Health*, Vol. 25, No. 1, 2025, p. 2.

⁶¹⁶ “Japan’s annual births fall to record low,”

the connection between the demographic decline and the Japanese work culture, as well as reinforcing the idea that the current enforcement of existing legislations is not enough. Indeed, the rigid labour structures, previously discussed, combined with the persistent gender inequalities in the workplace have contributed to make marriage and family planning increasingly difficult.⁶¹⁷

The current working system in fact, often requires men to work up to 60 hours per week and therefore remains implicitly based on the assumption that someone, traditionally the wife, will remain at home caring for the children and the household.⁶¹⁸ At the same time however, Japan's prolonged economic stagnation has contributed to an increase in job precarity which has made the traditional "shufu" model far less attractive and economically sustainable.⁶¹⁹ Furthermore, as the cost of raising children in Japan remains particularly high⁶²⁰ and Japanese companies continue to channel even educated women into temporary, low-paying roles,⁶²¹ many younger Japanese have chosen to postpone marriage and childbirth.⁶²² Indeed, according to a 2025 study conducted by Yoshida *et Al.*, non-regular employment combined with a limited utilisation of paternity leave and the continuation of traditional workplace practices such as long working hours and the gendered career track system, continues to undermine the work-life balance and therefore to discourage women from marriage and motherhood. On the contrary, women in stable and regular employment are more likely to express the desire to have children, particularly when they believe that work and family responsibilities can be reconciled.⁶²³

What has been defined by the OECD as "motherhood penalty,"⁶²⁴ also plays an important role in explaining why Japanese women are especially reluctant to have children. As argued by professor Nemoto in fact, within the Japanese employment context, a family-oriented attitude among female workers in particular, is often interpreted as an "explicit withdrawal from the competition for power," or in other words, as a lack of professional career ambition and commitment to the company.⁶²⁵ Indeed, as discussed previously in Section 4.2, as the Japanese corporate culture continues to value long

⁶¹⁷ H. Yoshida, M. Nishikitani, M. Okamoto, A. Kurokawa, M. Hoshina, M. Yazawa and N. Ichihara, "Career advancement and fertility intention among working women in Japan," p. 2.

⁶¹⁸ K. M. Mokate, *Women's Participation in Social Development: Experiences from Asia, Latin America and the Caribbean*, Inter-American Development Bank, 2004, p. 74.

⁶¹⁹ M. Crawford, "Abe's Womenomics Policy, 2013-2020," p. 3.

⁶²⁰ M. Bielski, "Matahara: An Issue with a Larger Context."

⁶²¹ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 174.

⁶²² M. Crawford, "Abe's Womenomics Policy, 2013-2020," p. 3 and "Japan's annual births fall to record low."

⁶²³ H. Yoshida, M. Nishikitani, M. Okamoto, A. Kurokawa, M. Hoshina, M. Yazawa and N. Ichihara, "Career advancement and fertility intention among working women in Japan," pp. 6-8.

⁶²⁴ Organisation for Economic Co-operation and Development (OECD), "Same Skills, Different Pay: Tackling Gender Inequalities at Firm Level," 2022, p. 1.

⁶²⁵ K. Nemoto, "Long Working Hours and the Corporate Gender Divide in Japan," p. 514.

working hours and complete dedication to the company, motherhood is often interpreted as incompatible with long-term career advancement.⁶²⁶ Furthermore, and especially because, in Japan, women “find it impossible to return to well-paid regular employment once they have taken time out to care for very young children,”⁶²⁷ to these career breaks also correspond considerable earning losses, which contribute to the widening of the country’s gender wage gap. As a result, and in order to avoid the sanctions associated with motherhood, many young Japanese women choose to postpone maternity or reduce the number of children they have.⁶²⁸

In this context, the non-ratification of ILO Convention No. 183 combined with the limited judicial use of international legislations such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women, both of which contain provisions on maternity protection,⁶²⁹ contribute to the persistence of structural inequalities affecting Japanese working women and, consequently, Japan’s fertility rates. As such, and as discussed in Sections 3.2.2, 3.2.3 and 3.2.4, while these Conventions formally recognise the importance of maternity protection, their limited enforcement, or non-ratification, by the Japanese government means that these types of protections remain largely aspirational.⁶³⁰ Furthermore, Japan’s non-ratification of the Optional Protocols to both Conventions restricts individuals’ ability to seek international remedies for violation of their rights. Similarly, at domestic level, the lack of effective punitive mechanisms within legislations such as the 2006 version of the Equal Employment Opportunity Law and the Women’s Advancement Promotion Act, undermine the practical enforcement of gender equality and maternity protections, as even companies engaging in discriminatory practices rarely face punitive sanctions such as heavy fines or criminal penalties.⁶³¹ As a result, the persistence of weak enforcement mechanisms of gender equality and maternity protection provisions continue to discourage women from marriage and motherhood.

⁶²⁶ J. Coates, L. Fraser and M. Pendleton, *The Routledge Companion*, p. 170, G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, “Gender equality discourse: a Japanese context,” p. 261 and K. Nemoto, “Long Working Hours and the Corporate Gender Divide in Japan,” p. 514.

⁶²⁷ Organisation for Economic Co-operation and Development (OECD), “Same Skills, Different Pay,” pp. 1-3.

⁶²⁸ K. Nemoto, “Long Working Hours and the Corporate Gender Divide in Japan,” p. 514.

⁶²⁹ ICESCR, Art. 10(2) and CEDAW Art. 11.

⁶³⁰ CESCR 2013 para. 13(d) and CEDAW Committee 2024, para. 39(f).

⁶³¹ K. Nemoto, “Long Working Hours and the Corporate Gender Divide in Japan,” p. 516. See also Section 3.3.2 for Women’s Advancement Promotion Act.

4.4.2 Burden of Care and Gender Inequalities

Another reason of the demographic consequences originated by the Japanese working structure, is the disproportionate burden of care. Despite the increase in female participation in Japan in fact, domestic responsibilities continue to be mostly assigned to women. Indeed, as already introduced in previous sections, and as analysed by Aki Iida in her article, according to a 2016 public opinion poll by the Japanese Cabinet Office, while results suggested that Japanese people were generally in favour of women obtaining important positions in society and employment, 40.6% of respondents also agreed that “husbands must work outside and wives must stay at home.” The same poll also revealed that those opposed to such statement believed that working and continuing to care for the children, the house and any elderly family member was completely possible. As such, women were expected to succeed simultaneously as both workers and primary caregivers, while men could continue to be mostly associated with paid work.⁶³²

If women were already traditionally expected to take on the burden of family care, fathers’ limited involvement in childcare and domestic labour combined with the consequent low uptake of paternity leave and the gender wage gap, further strengthen this gendered division of labour. Indeed, the 2020 White Paper on Gender Equality revealed that while there was virtually no difference in “housework time” between men and women in single-person households, as “housework/childcare/caregiving time” among younger women has been decreasing in recent years due to the delayed marriage trend, in households with children below the age of six, wives’ “housework/childcare/caregiving time” has increased in both single and double-income households. At the same, time husbands’ “housework/childcare/caregiving time” and “work-related time” have remained relatively stable at around 60 to 80 minutes per day for the former and between 8 to 9 hours for the latter, regardless of the wife’s employment status.⁶³³ Therefore this demonstrates how women are still expected to juggle both a career and their family responsibilities while their husbands can continue to focus solely on their work.

Similarly, the 2023 White Paper revealed that, among OECD countries, Japanese men continue to record the longest working hours and the lowest participation in unpaid domestic and childcare labour. Indeed, according to the 2021 Survey on Time Use and Leisure Activities composed by the Statistics Bureau of Japan, husbands averaged 7.6 hours of domestic work per week and 44.1 hours of paid labour, while wives performed 39.2 hours of unpaid work and only 19 hours in paid employment.

⁶³² A. Iida, “Gender inequality in Japan,” p. 46.

⁶³³ “White Paper on Gender Equality 2020,” Gender Equality Bureau, Cabinet Office, Government of Japan, 2020, pp. 4-5.

Even in households with children, the average weekly hours spent on domestic labour and childcare remained heavily gendered amounting to 7.1 hours for fathers and 34.6 for mothers, while paid working hours stood at 50.4 hours for fathers and 28.5 hours for mothers.⁶³⁴ In this context, it is unsurprising that the rate of paternity leave uptake for fathers has remained comparatively low.⁶³⁵ Indeed, as women's salaries continue to be lower and the gender wage gap remains wide, it often economically sensible for the lower-earning partner to handle household and childrearing responsibilities, which however can end up further hindering women's career opportunities and also dissuading them from having children.⁶³⁶

The lack of sufficient care infrastructures for both children and the elderly further exacerbate this system. In Japan in fact, childcare and eldercare services are not only generally underutilised, but also rather expansive. Indeed, as of 2023, the Gender Equality Bureau Cabinet Office has reported that the usage rate of external care services for childcare and housework remained extremely low at around 5%. At the same time, and particularly among the younger generation, around 20% of people have expressed their interest in making greater use of such services as a way to better balance work and family responsibilities.⁶³⁷ In particular, the potential demand for external support stood at 62.9% for general caregiving services, 33.5% for childcare and 26.3% for housework help.⁶³⁸ As analysed by Eweje *et Al.*, if on one side this trend suggests the existence of generational differences in attitudes towards receiving assistance with domestic responsibilities, on the other, economic concerns continue to prevent many from effectively outsourcing domestic help.⁶³⁹ As a result, women's unpaid labour continues to be understood as the most economically convenient solution, despite the high possibility of hindering women's career trajectory and potentially further dissuading them from having children.

As such, once again, despite the existence of formal equality legislations, a combination of deeply rooted traditional gender norms and apparently insufficient help offered by domestic legislations such as the Child Care and Family Care Leave Law continues to reinforce the gendered division of labour within the household. Consequently, and as already discussed, women continue to bear primary responsibility for childcare, elderly care and domestic labour even when participating in employment. As such, this unbalanced distribution of unpaid domestic labour limits women from pursuing stable

⁶³⁴ N. Nagase, "Much to be done in Japan's family and gender equality policies," pp. 5-6.

⁶³⁵ K. Asao, D. Smirnov and T. Xu, "Japan's Fertility: More Children Please," p. 4.

⁶³⁶ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, "Gender equality discourse: a Japanese context," p. 274 and K. Asao, D. Smirnov and T. Xu, "Japan's Fertility: More Children Please," p. 4, para. 8.

⁶³⁷ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, "Gender equality discourse: a Japanese context," p. 274.

⁶³⁸ "White Paper on Gender Equality 2020," p. 3.

⁶³⁹ G. Eweje, H. Toyosaki, K. Kobayashi, S. M. Chen, and M. Hosoda, "Gender equality discourse: a Japanese context," p. 274.

and career-oriented work positions and instead pushes many of them into non-regular employment. Thus, women remain dependant on flexible but unstable and low-income forms of employment, which in turn perpetuate economic dependency on the husband and further contribute to widening the gender wage gap. At the same time, the persistence of this system also contributes to the declining fertility rates, as women who have to balance both work and family responsibilities often decide to delay having children or have less than their desired number since managing both has become increasingly difficult.⁶⁴⁰

4.5 Economic Consequences

4.5.1 Macroeconomic Costs

Other than demographic implications, the underutilisation and continued sidelining of the female workforce have had a long-lasting impact on Japan's GDP and overall productivity. While Japanese women are among the most educated in the world,⁶⁴¹ their continued concentration in non-regular and low-income forms of employment has resulted in a waste of human capital and skills. Recognising this issue, in 2013, the former Japanese Prime Minister Shinzo Abe introduced the economic policy known as "*Womenomics*" as one of the core pillars of the country's economic growth.⁶⁴² This policy was based on research demonstrating that a more gender equal participation in the labour market could help boost Japan's economic growth, arguing that an increase in female labour participation could raise the country's GDP from 13% to 15%.⁶⁴³ Indeed, according a 2012 IMF Working Paper, increasing female labour participation (FLP) would create a positive push for Japan to overcome its economic stagnation. More specifically, if Japan's FLP were at the same level as other G7 countries, excluding Italy, Japan's GDP could increase by 4%. A FLP equal to those of northern European countries would further raise Japan's GDP by 8%.⁶⁴⁴

In the years following the introduction of Abe's "*Womenomics*," while this strategy did contribute to some degree of economic growth, although not to the anticipated extent,⁶⁴⁵ "women's contribution

⁶⁴⁰ K. Asao, D. Smirnov and T. Xu, "Japan's Fertility: More Children Please," p. 4.

⁶⁴¹ C. Steinberg and M. Nakane, "Can Women Save Japan?", (WP/12/248), *International Monetary Fund*, 2012, p. 5, footnote 1.

⁶⁴² A. Iida, "How Do Women "Shine?", pp. 1-3.

⁶⁴³ "Japan introduces "*Womenomics*" to counter the country's aging workforce and boost GDP," *Council on Foreign Relations*. Available at: <https://www.cfr.org/womens-participation-in-global-economy/case-studies/japan/>

⁶⁴⁴ C. Steinberg and M. Nakane, "Can Women Save Japan?", p. 5.

⁶⁴⁵ "Abenomics: How Shinzo Abe aimed to revitalise Japan's economy," *BBC News*, 2022. Available at: <https://www.bbc.com/news/business-62089543>

to Japan's overall productivity and GDP growth [has remained] stubbornly low.”⁶⁴⁶ As such, while Abe's “*Womenomics*” can be used to explain the increase in female labour participation mentioned in Section 4.2.2, the disproportional concentration of female labour in non-regular and part-time employment explained the limited economic growth experienced by the country. Indeed, as argued by Japanese sociologist Kazuo Yamaguchi, the adoption by Japanese companies of gender equality and work-life balance policies, defined as policies able to “encourage employees to fulfil their potential regardless of gender,”⁶⁴⁷ and help them find solution for work–life balance, would strongly help increase the company overall productivity.⁶⁴⁸ As such, if Japanese domestic legislations aimed at promoting gender equality and work-life balance in employment, such as the Equal Employment Opportunity Law, the Women's Advancement Promotion Act and the Child Care and Family Care Leave Law were of legally binding nature, included actual punitive sanctions for non-compliance and did not rely on employers-set goals,⁶⁴⁹ Japan would likely be better positioned to achieve sustainable economic growth. Consequently, the limited practical enforcement of these gender equality legislations combined with the continued underutilisation of women in the labour force undermines the achievement of substantive gender equality and also limits Japan's ability to express its full economic potential.

4.6 Societal Implications

4.6.1 The Legitimacy Gap Between Formal Law and Practice

One of the main limitations, at societal level, of Japan's enforcement of gender equality legislations is the growing disconnect between formal legal commitments and women lived experiences within the workplace and its implications within society. Indeed, while the adoption of equality legislations at domestic level can create the illusion that gender equality has been achieved, the persistence of discriminatory practices, such as the dual track employment system and the phenomenon of “*matahara*,” suggest otherwise. In her article, Professor Hayes advances a similar argument in relation to education and recruitment in academia, claiming that the narrative surrounding gender equality has resulted “in a complacency that [has] left male normativity uninterrogated.”⁶⁵⁰ Indeed, she observes that “rather than challenging gender stereotypes, Japanese domestic labour laws

⁶⁴⁶ M. C. Brinton, “Unlocking the potential of Japan's female workforce,” *East Asia Forum*, 2024. Available at: [Unlocking the potential of Japan's female workforce | East Asia Forum](#)

⁶⁴⁷ K. Yamaguchi, *Gender Inequalities in the Japanese Workplace and Employment*, Springer, 2019, p. 143.

⁶⁴⁸ *Ibid.*, pp. 143-165.

⁶⁴⁹ See Sections 3.3.1, 3.3.2 and 2.4.1 respectively for a more in-depth analysis.

⁶⁵⁰ B. E. Hayes, “CEDAW's efficacy,” p. 43.

continue to protect corporatist aims at the expense of women.”⁶⁵¹ As a result, this claim suggests that despite the formal increase of equality measures, many companies and institutions continue to favour and reproduce traditional gender structures, thus creating a gap between formal legislations and their practical implementation.

Similarly, Professor Crawford, drawing on the work of Helen Macnaughtan, observes that while Japan’s traditional gender values have become completely disconnected from the current social reality, “the renegotiation of men, women, work and childcare is complex.”⁶⁵² While women’s participation in employment has increased over time,⁶⁵³ employment structures have not adapted at the same pace. Indeed, as already discussed in previous sections, long working hours, occupational segregation, expectations surrounding motherhood and unequal distribution of domestic labour continue to limit women’s career advancement. As such, rather than completely dismantling rooted traditional gender norms in employment, gender equality legislations in Japan have mostly expanded women’s access to new opportunities in employment without properly addressing the structural barriers that make it difficult for women to balance professional and domestic responsibilities.

As demonstrated throughout this thesis then, Japan has made more progress in implementing formal equality, or equality of opportunity, than substantial equality, or equality in outcome. While domestic legal frameworks formally prohibit discrimination and promote women’s participation in the workforce in fact, their non-binding nature and their limited enforcement remain often inadequate to address and challenge ingrained structural practices. As a result, however, this gap between formal legislations and their practical enforcement can undermine the public trust in these legal provisions. Thus, when equality legislations fail to produce tangible improvements in everyday life, individuals may begin to perceive such laws as mostly symbolic rather than actually transformative. Consequently, this can reduce confidence in the effectiveness of these legal measures and weaken the pressure for further change. As a result, the persistence of gender inequality in employment despite the existence of extensive legal commitments risks effecting both women’s socio-economic position and the perceived legitimacy and credibility of the Japanese legal framework itself.

⁶⁵¹ *Ibid.*, p. 32.

⁶⁵² M. Crawford, “Abe’s Womenomics Policy, 2013-2020,” p. 3.

⁶⁵³ World Economic Forum, *Global Gender Gap Report*, p. 39.

Conclusion

This thesis intended to examine the persistent discrepancies between Japan's international and domestic legal obligations on gender equality in employment and their practical enforcement. Thus, through an analysis of Japan's international legal commitments and the national legislations adopted to implement them, it has argued that, despite the many legal developments, substantial barriers to the achievement of *de facto* equality persist in the Japanese labour market. Therefore, this thesis has demonstrated that gender inequality in the Japanese employment system persists due to a limited enforcement of international obligations and weaknesses in domestic legislations unable to challenge the persistent influence of traditional gender norms. Combined, these factors have limited the ability of both national and international mechanisms to help the country achieve substantive equality for women.

Indeed, while it is undeniable that the ratification of international conventions on gender equality in employment and the subsequent adoption of national legislations for the protections of Japanese women has led to some progress, much is yet to be done before substantive gender equality can be considered achieved. The limited way in which Japanese courts implement and enforce international instruments such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the ratified ILO Conventions No. 100 and No. 156, does not allow these instruments to positively influence the country as much as they could. On top of this, the non-ratification of the Optional Protocols to the ICESCR and the CEDAW prevents individuals from submitting their complaints for alleged violation directly to the respective treaty bodies. As a result, victims who are unable to obtain justice through domestic courts are further isolated as they are also deprived of access to international remedies. Furthermore, the non-ratification of the ILO Conventions No. 111 and No. 183 allows Japan to avoid being bound by the obligations concerning non-discrimination and maternity protection while also contributing to the preservation of employment structures that favour traditional gender roles, such as that of the male breadwinner, thus further perpetuating gender discrimination in employment.

Similarly, while over the years Japan has adopted various domestic laws on the protection of gender equality rights in employment, these have proven too weak to challenge the deeply rooted traditional gender norms that continue to shape the Japanese employment system. Indeed, the non-binding nature of the Equal Employment Opportunity Law and its reliance on voluntary compliance have enabled the perpetuation of practices, such as the dual-track career system, that reinforced and legitimised gender discrimination in employment. Through this system in fact, women continue to be

channelled into the *ippan-shoku*, or general track, which is characterised by lower wages and fewer opportunities for promotion. Moreover, this law, which is widely regarded as the core legislation for the protection of women's economic rights, also fails to place any positive duty on employers and lacks punitive sanctions against those who violate its provisions. Likewise, the Women's Advancement Promotion Act with its non-binding nature, lack of sanctions and reliance on employers-set goals has struggled to produce tangible progress. In practice in fact, the standards set by employers are often minimal and the lack of sanctions weakens the incentive to comply with the laws' obligations. In addition to this limited domestic legislative framework, the Marital Deduction Law continues to financially incentivise households in which women reduce their working hours or withdraw from the labour market altogether in order to benefit from tax advantages. As a result, this tax system reinforces traditional gender roles contributing to the persistence of gender-based labour market segregation.

As such, it is difficult to conclude that these legislations were able to effectively improve the Japanese labour market in terms of gender equality. Indeed, while Japan has made significant progress in achieving formal equality and promoting equal opportunities, these improvements have yet to translate into substantive equality of outcomes for women. In practice in fact, the Japanese work culture continues to operate on the expectation that employees demonstrate complete availability, loyalty and long-term commitment to their employer, thus defining the "ideal worker" as someone who would put the well-being of the company above all else. In this context then, men continue to be positioned as the full-time breadwinners of the household, while women continue to be assigned with caregiving responsibilities regardless of their personal aspirations or career ambitions. Consequently, as women continue to be expected to reduce their professional participation or completely leave their work after marriage or childbirth, phenomena like that of the "*matahara*" persists. In turn, these dynamics contribute to the continued concentration of women in non-regular forms of employment and occupational segregation practices, both also contributing to the widening of the gender wage gap.

The perpetuation of traditional gender norms allowed by this system has therefore led to demographic, economic and societal consequences. Firstly, as women have begun rejecting the *shufu* model, that envisaged women becoming economically dependent on their husbands while assuming full responsibility of domestic and caregiving duties, there has been an increase in delayed marriages and, more importantly, motherhood. This in turn has negatively impacted the already low fertility rates of the country, thus contributing to the ongoing Japanese fertility crisis. At the same time, as many women continue to experience the societal pressure to prioritise their role as wives and mothers,

Japan has failed to make full use of its female workforce's economic potential. In turn, this has resulted in both a waste of human capital and skills, and also in the country's inability to achieve sustainable economic growth. Lastly, the growing disconnect between formal legal commitments and women lived experiences risks to undermine the public trust in these legal provisions. Japan's efforts towards the promotion and protection of gender equality in the workplace may indeed be increasingly perceived as symbolic rather than truly transformative, thus weakening the credibility and effectiveness of its gender equality framework.

Achieving substantive gender equality within the Japanese labour market is therefore not an impossible goal. It will require however, the stricter enforcement of international standards and the subsequent adoption of binding domestic legislations able to challenge the deeply rooted traditional gender norms that continue to shape the Japanese employment system. In this regard, it could be interesting to centre future studies on how to best reform the current legislation in order to effectively dismantle these structural inequalities, thus facilitating long-lasting change within the Japanese labour market.

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